

No. 14863

United States
Court of Appeals

For the Ninth Circuit.

UNITED PRESS ASSOCIATIONS, a Corpora-
tion,

Appellant,

vs.

SIDNEY DEAN CHARLES, PAUL S. CHARLES
and PATRICIA CHARLES and the PIO-
NEER PRINTING COMPANY, a Corpora-
tion,

Appellees.

Transcript of Record

Appeal from the District Court
for the District of Alaska,
Division Number One.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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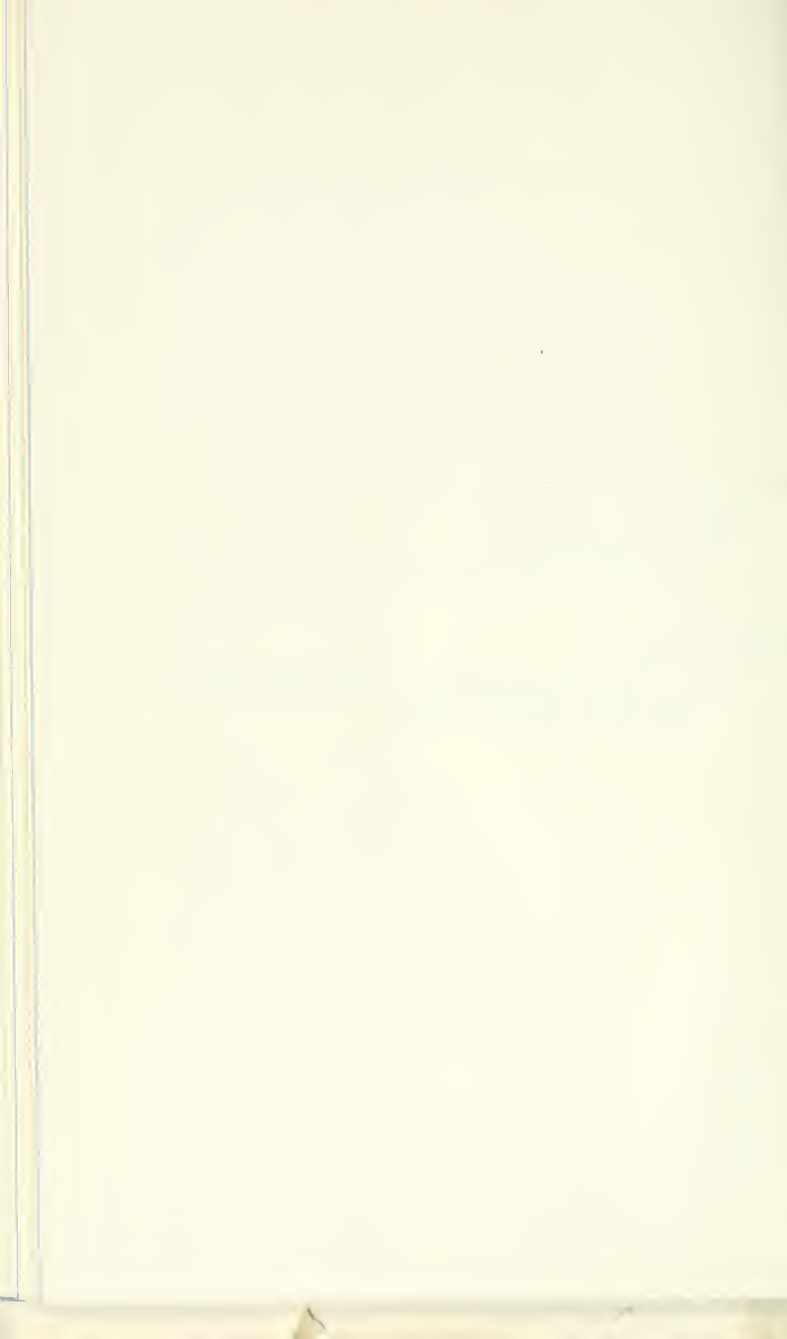
ATTORNEYS OF RECORD

For Appellant:

JOHN H. DIMOND,
Box 366, Juneau, Alaska.

For Appellees:

FAULKNER, BANFIELD & BOOCHEVER,
Box 1121, Juneau, Alaska.



In the District Court for the District of Alaska,
Division Number One, at Juneau

Civil Action No. 7031-A

UNITED PRESS ASSOCIATIONS, a Corpora-
tion,

Plaintiff,

vs.

SIDNEY DEAN CHARLES, PAUL S.
CHARLES and PATRICIA CHARLES, and
the PIONEER PRINTING COMPANY, a
Corporation,

Defendants.

COMPLAINT

1. Plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located in New York City, New York, and is engaged in the business of accumulating and disseminating news reports via automatic teletype, telegraph, telephone and other agencies, to a large number of radio stations and newspapers throughout the United States.

2. Defendant Sidney Dean Charles was, on or about June 30, 1945, the editor and publisher of the Alaska Fishing News at Ketchikan, Alaska, a newspaper owned by a partnership called the Alaska Fishing News consisting of Sidney Dean Charles, Paul S. Charles and Patricia Charles as partners. Defendant Pioneer Printing Company, Inc., is an

Alaska corporation, incorporated on or about April 12, 1948, and is the owner and publisher of the Ketchikan Daily News of Ketchikan, Alaska, this newspaper being the successor to the Alaska Fishing News.

3. Plaintiff says that the complaint is for money due under a contract in writing.

4. On or about June 30, 1945, plaintiff and defendant Sidney Dean Charles (the latter on behalf of the said partnership, the Alaska Fishing News) entered into a certain agreement in writing by the terms and conditions of which plaintiff agreed to furnish its Regular News Report to defendants for use in publishing defendants' newspaper for a term of three years beginning September 1, 1945, for which news service defendants agreed to pay plaintiff the sum of \$38.17 per week, payable weekly in advance. Subsequent to the date of the execution of said agreement, certain modifications thereto were made by mutual agreement between the parties thereto, and pursuant to paragraph Second of said agreement certain rate increases were made. Such agreement, the modifications thereof and all written documents pertaining to such modifications and such rate increases are attached hereto, marked Exhibit A and made a part hereof. By virtue of the renewal provisions of paragraph Eighth of said agreement and the said modifications contained in Exhibit A, the term of said agreement, as so modified, was extended to continue until September 27,

1962. The documents comprising Exhibit A are hereinafter referred to as the "said agreement."

5. Plaintiff says that it has at all times duly performed all the terms and conditions of said agreement on its part to be performed and that at all times it was ready, willing and able to complete performance of said agreement, and to comply with all the terms and conditions thereof, but has been prevented from so doing by the wrongful and willful failure and refusal of defendants to pay for said news services and to carry out and perform their part of said agreement, although requested to do so by plaintiff.

6. Defendants accepted and paid for a portion of said news service supplied to them by plaintiff under the terms of said agreement, but on or about February 14, 1954, repudiated said agreement.

7. By reason of such wrongful and willful breach by defendants of the terms of said agreement, plaintiff has been and is now prevented from delivering and furnishing said news service to defendants for the entire term of said agreement, and plaintiff says that it would have, but for such wrongful and willful breach by defendants, been entitled to receive a profit of \$21,489.57, representing the difference between the aggregate amount plaintiff would have been entitled to receive under said agreement and the costs to plaintiff of furnishing said news service to defendants during the term thereof.

8. Defendant Pioneer Printing Company, Inc. has incurred joint and several liability, along with the other defendants, for plaintiff's claim herein by reason of the former's acceptance of a portion of said news service supplied to it by plaintiff.

Wherefore, plaintiff demands judgment against the defendants Sidney Dean Charles, Paul S. Charles, Patricia Charles and the Pioneer Printing Company, Inc., jointly and severally, in the sum of \$21,489.57, together with interest at the rate of six per cent per annum on each unpaid weekly installment on the date that it would have become due, and together with the costs of this suit and an attorney's fee for plaintiff.

/s/ JOHN H. DIMOND,
Attorney for Plaintiff.

EXHIBIT A

Agreement

Made this Thirtieth day of June, 1945, at New York, N. Y., between the United Press Associations, a New York Corporation, hereinafter called United Press, and The Alaska Fishing News, a copartnership hereinafter called the Publisher.

Witnesseth:

That for an in consideration of the sum of One Dollar, each to the other in hand paid, the receipt

whereof is hereby acknowledged, and of the mutual covenants herein contained, the parties hereto have mutually agreed as follows:

First.

United Press hereby bargains and sells to the Publisher the right and privilege of publishing in the The Alaska Fishing News, a newspaper printed in the English Language at Ketchikan, Alaska, its regular news Report, and agrees as far as practicable to deliver to the Publisher such news Report by radio-teletype for one hour daily on each of the six regular publication days each week.

Said News Report shall be filed to the Publisher at Seattle, Washington, or elsewhere if United Press so elect.

Second.

The Publisher agrees to provide typewriter and any necessary quarters for wire and operator or printer-telegraph machines, and any necessary wire, installation and power required for operation of printer-telegraph machines, and agrees to receive and accept said news Report and pay without deduction to United Press, at its New York office, during the term of this agreement and any extension thereof, the sum of \$38.17 (thirty-eight dollars and seventeen cents) per week, weekly in advance, Provided, (1) that United Press shall not be required to furnish such Report on Sundays or later than 12 o'clock Noon on Christmas or Fourth of July; (2) that if the Telegraph or Telephone Company to which tolls

are paid on behalf of the Publisher by United Press, raises the tolls on said news Report or increases the rental rate on printer-telegraph machine equipment supplied by them; or if the wage scale for union employees is increased, said Publisher shall also pay the increases in such tolls, rental or union wages to the United Press; (3) that if said news Report or any wire or other facilities used in the transmission thereof shall be hereafter made subject to any Federal or State tax of any kind payable either directly or indirectly by United Press, the Publisher shall reimburse United Press for the proportion thereof, as determined by United Press, properly applicable to said news Report; (4) that in case of a war or any other extraordinary event requiring an additional or extraordinary expenditure of \$500.00 or more weekly by United Press in securing and delivering the news of the same, United Press may assess and the Publisher shall pay United Press an additional weekly sum not to exceed 25% of the Publisher's regular weekly payment for a period coincident with said extraordinary expenditure by United Press.

Third.

The Publisher agrees not to furnish, or permit to be furnished, by his employees or from his office any portion of the United Press Report, or any news tips therefrom, to any other person, corporation, publication or publisher, or make any other use thereof than in the above-mentioned newspaper, without the written consent of United Press, and

further agrees to respect all release pledges on advance matter and to carry copyright line on all copyrighted matter, and to carry the United Press credit line wherever it appears in the service copy.

Fourth.

The Publisher agrees to furnish to United Press at the office of the Publisher all the local news and special service from tributary news territory collected by the Publisher, without cost to United Press.

Fifth.

It is mutually agreed that United Press reserves the right to make working arrangements and exchanges of news and wire facilities with other press associations, publishers or persons and to sell said news Report to any other party or parties.

Sixth.

It is further mutually agreed that United Press shall in no event be liable for any loss or damage arising to the Publisher by reason of the publication of any of the news received by the Publisher from United Press.

Seventh.

This agreement is made subject to the ability of wire companies to furnish facilities, and the continuance of intermediate clients now on the circuit, unless United Press is satisfied with the rate named in this agreement, or same can be mutually readjusted.

Eighth.

This agreement shall continue for three (3) years from September 1, 1945, and shall thereafter renew itself continuously for periods of five (5) years unless either party notify the other by registered letter received at least six months before the beginning of the first renewal period or any subsequent renewal period, of its desire to terminate this agreement, in which event this agreement shall terminate at the beginning of the next renewal period which would have commenced thereafter; otherwise, it shall remain in full force and effect, subject to all the terms and conditions hereof. In the event of the sale, transfer or consolidation of the aforesaid newspaper property of the Publisher, the Publisher hereby guarantees that his successor or assignee will fulfill the terms and conditions herein contained for the full life of this agreement.

Ninth.

It is further mutually understood and agreed that time, both as to delivery of said news Report and as to said weekly payments, is of the essence of this agreement; that a waiver of any breach shall not be construed to effect a waiver of any future breach of this agreement.

Tenth.

This written agreement comprises the entire understanding of the parties hereto on the subject matter herein contained; any and all oral representations

or agreements of any agent of either party hereto shall be null, void and of no effect whatsoever.

Eleventh.

It is mutually understood that the rate named in said agreement includes a war assessment of 15 per cent now in general effect, but that upon general discontinuance of said war assessment no reduction shall accrue to Publisher thereunder.

Twelfth.

It is mutually understood that the September 1, 1945, starting date for six-days-per-week is contingent upon commencement of daily publications by the Publisher upon that date; and should daily publication not start upon that date, terms of this agreement shall be held in abeyance until such daily publication is started by the Publisher.

Thirteenth.

Executed and accepted by United Press upon understanding that attached letter dated August 9, 1945, and its provisions become part hereof.

Actually started Svcc. 10/3/45.

UNITED PRESS
ASSOCIATIONS,

By EDWIN MOSS WILLIAMS,
Vice-President.

THE ALASKA FISHING
NEWS,

By SIDNEY DEAN CHARLES,
Editor and Publisher.

Signed and Delivered in the Presence of:

CARL B. MOLANDER,

As to U. P. A.

MURRAY M. MOLER,

As to Publisher.

August 9, 1945.

Mr. Sidney D. Charles,
Editor and Publisher,
The Alaska Fishing News,
Ketchikan, Alaska.

Dear Mr. Charles:

In the interim between negotiation of the United Press agreement between Mr. Moler and yourself and its arrival in New York a development in our relations with the Commercial Telegraphers' Union has made it impossible for us to accept the agreement in its present form.

The development is insistence by the Union that a full-time man be provided to operate the Alaska circuit. Since the circuit, at least at the start, will require only an hour a day of operating and since our rate to you was based on an operating cost of one hour a day, we naturally could not afford to pay an operator for eight hours work while in turn being paid by you for the one hour actually performed.

We are hopeful of getting more Alaskan business and thus have more income to pay operating costs;

and that your paper as a daily will grow so rapidly that you will require more than an hour a day of copy. We are willing to undergo the operating loss involved in this situation for six months during which time we will make every effort to secure additional Alaskan business and thus eliminate the loss.

Since you desire to start teletype service as soon as possible, we are sending herewith your executed copy of the agreement between us, subject to the understanding that it is modified by the stipulation that at the end of six months from the date of start of service United Press may increase the rate by an amount sufficient to pay the actual operator's salary cost and that if the amount of this increase is not satisfactory to you that you may change the service to any amount of tolls collect DPR you desire, not to exceed 3600 words daily.

This will also confirm the understanding that the service mentioned in Clause One of the agreement shall consist of one hour of teletype service daily from Seattle over facilities of the Army Signal Corps, tolls to be paid by the publisher and the teletype to be furnished by United Press; that a teletype machine will be installed as soon as possible and service started on the basis of one hour of service on each of the three days per week on which the Alaska Fishing News is published. Such service will continue on a thrice weekly basis until the Alaska Fishing News Begins daily publication at

which time all terms of the agreement will become effective. For the thrice weekly service the publisher will pay the United Press the sum of \$32.17 weekly and also pay the Signal Corps tolls.

If this is satisfactory to you, please signify your acceptance by signing the enclosed carbon of this letter and air mailing it to us?

With all good wishes, we are,

Sincerely yours,

EDWIN MOSS WILLIAMS.

EMW:IR

Accepted: The Alaska Fishing News.

Alaska Fishing News
Ketchikan, Alaska.

Ketchikan, Alaska
September 8, 1945

Mr. Dan Bowerman,
United Press Associations
San Francisco Bureau,
814 Mission Street,
San Francisco, California

Dear Mr. Bowerman:

Replying to your letter of September 4, regarding teletype and wire service.

We understand from your letter that we may take the teletype service, at a cost of \$38.17 a week for

hour, 6 days a week, and that we are to pay the tolls. We further understand that during the first six months of this service, you will pay the Seattle telegraph operator, and that at the end of 6 months, we decided to continue the teletype service, we would pay this operator's salary, at \$52.50 per week.

In other words, we understand from your letter that at the end of 6 months, we may return to our present service on a daily basis at \$20.00 a week plus tolls, or continue with the teletype at \$38.17 a week, plus tolls, plus telegraph operator's salary.

On this basis, we would like to have the service started by teletype at as early a date as possible.

Yours very truly,

SID D. CHARLES,
Editor.

Daily Fishing News
Ketchikan, Alaska

October 12, 1946.

Mr. Dan Bowerman,
United Press Associations,
14 Mission St.,
San Francisco, California.

Dear Mr. Bowerman:

Thank you for your letter of October 9 regarding teletype service. We greatly appreciate your fine

cooperation in offering to share the operator expense, bringing our part of that expense down to \$25.00 per week. On that basis we will continue the teletype service, and hope that you will be able to line up new patrons in Alaska.

The service is fine in most respects, however, we have suggested to the Seattle office that they give us more short dispatches, particularly those with an Alaska slant first, northwest second, and national and international news third. Of course on any big news, we want full coverage.

We greatly fear a possible shortage of newsprint next year, as our circulation continues to grow, and ask that should you learn of any available supply of 52" roll newsprint, you advise us at once.

Thank you for your cooperation.

Yours very truly,

THE DAILY ALASKA
FISHING NEWS,
SID D. CHARLES,
Editor.

Ketchikan, Alaska, Fishing News

Effective January 6th, 1946, total basic rate increased by \$1.15 per week account operator's increase. This to be applied against 1 hour 6 days printer.

Effective December 29th, 1946, total basic rate increased by \$3.05 per week account operator's increase. This to be applied against 1 hour 6 day ptr.

Operators Increase—January 4th, 1948—\$3.09. This applied against 1 hr. 6 day Ptr.

Operators Increase—January 9th, 1949—\$2.06. This applied against 1 hr. 6 day ptr.

Extraordinary Cost Assessment—Effective Jan. 7, 1951, \$4.75 per week.

Labor Increase—May 5, 1953—\$4.18. This applied against 1 hr. 6 day Ptr.

Modification of Agreement

New York, February 21, 1950.

With reference to the agreement between United Press Associations and The Alaska Fishing News or United Press news service to The Alaska Fishing News at Ketchikan, Alaska (now known as The Ketchikan Daily News) it is mutually agreed that:

1. The rate mentioned in Clause II thereof is suspended by mutual agreement starting February 9, 1950, and the rate during such suspension shall be \$52.52 per week.

2. This suspension may be terminated by either party at any time upon thirty days' notice and the weekly rate would then return to the present figure of \$72.52 per week.

3. The term of the agreement between the par-

ties shall be extended by the length of time during which the above suspension is in effect.

UNITED PRESS
ASSOCIATIONS,

By JACK BISCO,
Vice-President.

THE ALASKA FISHING
NEW,

By SID D. CHARLES.

[Endorsed]: Filed April 23, 1954.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS

Come now the defendants above-named, and in answer to plaintiff's complaint, admit, deny and allege as follows:

1. Defendants admit the allegations contained in paragraph 1 of the complaint.
2. Defendants admit the allegations contained in paragraph 2
3. Referring to the allegations contained in paragraph 3, defendants admit that plaintiff is seeking a money judgment in this action.
4. Referring to the allegations contained in paragraph 4, the defendants deny that the agree-

ment referred to therein was extended until September 27, 1962, and they admit the remaining allegations contained in paragraph 4.

5. Defendants deny each and every allegation contained in paragraph 5.

6. Defendants admit the allegations contained in paragraph 6.

7. Referring to the allegations contained in paragraph 7, the defendants admit that they have discontinued the news service of the plaintiff, and deny each and every other allegation contained in paragraph 7.

8. Defendants deny the allegations contained in paragraph 8.

For further and separate affirmative defenses to plaintiff's complaint, the defendants allege as follows:

First Affirmative Defense

That the plaintiff has not qualified to do business in the Territory of Alaska, and had not so qualified at any of the times mentioned in the complaint and it is not now qualified and is not entitled to bring or maintain this action; that it has not filed its articles of incorporation, financial statement or annual reports required by law. It has paid no corporation taxes, income, or license taxes, although it was doing business in Alaska at all times mentioned in the pleadings.

Second Affirmative Defense

1. Defendants allege that on or about June 30 1945, The Alaska Fishing News, by Sidney Dear Charles, editor and publisher, signed the contract and the other papers attached to plaintiff's complaint marked "Exhibit A," and in return therefor plaintiff agreed to furnish The Alaska Fishing News, a newspaper published at Ketchikan, Alaska with its regular news reports and agreed, as far as practicable, to deliver to the publisher such news reports by radio-teletype for one hour daily on each of six regular publication days each week, and that the term "regular news report" has a well-defined meaning and it meant that plaintiff would furnish to The Alaska Fishing News an adequate news service covering all news of national importance regularly published in Alaskan papers, and that the price to be paid therefor was \$38.17 a week.

2. That the rate set forth in the contract, Exhibit A, was increased from time to time by the plaintiff and The Alaska Fishing News was obliged to pay and did pay in full all increases over the contract price, in order to obtain such news service as the plaintiff was furnishing it from time to time.

3. That plaintiff did not furnish an adequate news service and did not furnish the defendants with the news service contemplated and agreed upon to be furnished by the contract, Exhibit A, and because of that fact the defendants were unable to give to the public the ordinary regular news from outside the vicinity of Ketchikan, Alaska, and they were

able to compete in this regard with other papers published in the City of Ketchikan.

4. That plaintiff repeatedly agreed to improve its service and to furnish such service as was contemplated by the contract or agreement to be furnished by it, and it advanced from time to time various promises of improvement and promises to comply with the terms of the contract, accompanied by excuses for not having furnished adequate service, but it did not at any time during the life of the contract furnish the service agreed to be furnished.

Third Affirmative Defense

As a third affirmative defense, defendants allege:

1. Defendants reallege all the allegations contained in the second affirmative defense hereinabove set forth, and further allege as follows:

2. That on or about April 12, 1948, the above-named defendant Pioneer Printing Company, was incorporated as an Alaskan corporation and it purchased the property, newspaper and all the rights of The Alaska Fishing News, and it thereupon changed the name of the paper to the Ketchikan Daily News.

3. That the Ketchikan Daily News, while a successor of the Alaska Fishing News, is not the same paper and the owner thereof, namely the Pioneer Printing Company, a corporation, is owned and controlled by its stockholders, and while the defendants Sidney Dean Charles, Paul S. Charles and

Patricia Charles are stockholders in the Pioneer Printing Company, a corporation, they are not the only stockholders and others own stock in that corporation, and the Pioneer Printing Company, a corporation, has never at any time agreed to the terms and conditions of the contract between The Alaska Fishing News and the United Press Associations set forth in plaintiff's complaint as Exhibit A, and while it continued to take the service of the United Press, such as it was, until February 14, 1954, never at any time agreed to be bound by the terms of the contract and agreement set up as Exhibit to the complaint.

4. The Pioneer Printing Company, a corporation, paid for such service as it received from the United Press at the rates charged by the United Press until February 14, 1954, when it discontinued that service, having paid in full for all services received from plaintiff, and it was at no time bound by any agreement to continue taking any service from the United Press, the plaintiff herein, and therefore the Pioneer Printing Company is not indebted to plaintiff in any sum whatsoever.

COUNTERCLAIM

For a counterclaim to plaintiff's complaint, the defendants allege as follows:

1. That after the discontinuance of the United Press service to the Pioneer Printing Company, a corporation, and between February 15, 1954, and March 22, 1954, certain demand drafts were sent to

the Miners and Merchants Bank of Ketchikan, Alaska, for payment by Pioneer Printing Company, and these drafts amounted to \$368.70 and they were inadvertently paid and charged to the account of Pioneer Printing Company and plaintiff received the proceeds thereof, and therefore plaintiff is indebted to the defendant Pioneer Printing Company the sum of \$368.70.

Wherefore, defendants pray that plaintiff's complaint be dismissed and that defendants have and recover from plaintiff their costs and disbursements therein including a reasonable attorneys' fee, and that the defendant Pioneer Printing Company recover from the plaintiff the sum of \$368.70 together with interest thereon from March 22, 1954, until paid.

FAULKNER, BANFIELD &
BOOCHEVER,

By /s/ H. L. FAULKNER,
Attorneys for Defendants.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 15, 1954.

title of District Court and Cause.]

PLAINTIFF'S REPLY

In reply to the counterclaim contained in defendants' answer, plaintiff admits all of the material allegations contained therein with the exception of

the allegation that "plaintiff is indebted to the defendant Pioneer Printing Company in the sum of \$368.70."

Dated: June 4, 1954.

/s/ JOHN H. DIMOND,
Plaintiff's Attorney.

Receipt of Copy attached.

[Endorsed]: Filed June 4, 1954.

[Title of District Court and Cause.]

REQUEST FOR JURY TRIAL

Comes now the defendants by their attorneys and move the Court to grant defendants a jury trial of the above-entitled cause.

This motion is based upon Subdivision (a) of Rule 38 and Subdivision (b) of Rule 39 of the Federal Rules of Civil Procedure.

Dated at Juneau, Alaska, August 3, 1954.

FAULKNER, BANFIELD &
BOOCHEVER,

By /s/ H. L. FAULKNER,
Attorneys for Defendants.

Receipt of Copy acknowledged.

[Endorsed]: Filed August 5, 1954.

Title of District Court and Cause.]

Minutes of Friday, Sept. 24, 1954

This case came on before the court for hearing on Motion to Transfer to Ketchikan for trial and on Motion for Jury Trial. John H. Dimond appeared for plaintiff and H. L. Faulkner for defendants. After hearing counsel, the motion for transfer was granted and the motion for a jury trial was denied.

Title of District Court and Cause.]

ORDER

Since the denial on September 24, 1954, of the defendants' motion for a jury trial, editorials have appeared in the defendants' newspaper in defense of the judge of this court from attacks by Warren Taylor. I feel that in these circumstances I should not be the trier of the issues of fact in the foregoing case, and hence it is

Ordered, *sua sponte*, under Rule 39, F.R.C.P., that the case be tried by a jury.

Dated at Ketchikan, Alaska, April 12, 1955.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed April 12, 1954.

[Title of District Court and Cause.]

COURT'S INSTRUCTIONS TO THE JURY

No. 1

Ladies and Gentlemen of the Jury:

We have now reached the point in the trial of this case where it becomes the duty of the Court to instruct you as to the law that will govern you in your deliberations upon the facts of this case.

You are accepted as jurors in reliance upon your answers to the questions asked you concerning your qualifications. You are just as much bound by those answers now and until you are finally discharged from further consideration of this case as you were then. The oath taken by you obligates you to well and truly try this case and a true verdict render according to the law and the evidence, without allowing yourselves to be swayed by passions, sympathy, or prejudice or like emotion.

Neither the statements of counsel engaged in the trial of this case, nor the allegations of the pleadings, except so far as they constitute admissions, are to be considered by you as proof of the facts to which they relate. You should not regard or consider the relative financial condition of the parties to the suit, nor the effect of your verdict upon the parties, or any of them, or attempt to arrive at a verdict based upon your individual or collective opinions as to the abstract principles of justice which should govern the case.

It is not for you to say what the law is or should be regardless of any idea you may have in that respect. It is the exclusive province of the Court to declare the law in these instructions, and it is your duty as jurors to follow them in your deliberations and in arriving at a verdict.

On the other hand it is the exclusive province of the jury to declare the facts in the case, and your decision in that respect, as embodied in your verdict, when arrived at in a regular and legal manner, is final and conclusive upon the Court. Therefore probably the greater ultimate responsibility in the trial of the case rests upon you, because you are the triers of the facts.

No. 2

This is a civil suit in which the plaintiff, engaged in the business of gathering and disseminating news to radio stations and newspapers, seeks to recover damages in the sum of \$21,489.57 allegedly sustained as a result of an alleged breach of its contract with the defendants.

The complaint alleges that on or about June 30, 1945, the defendant Sidney Dean Charles was the editor and publisher of the Alaska Fishing News, at Ketchikan, a newspaper owned by a partnership consisting of the individual defendants; that the defendant Pioneer Publishing Co., Inc., was incorporated on or about April 12, 1948, and is the owner and publisher of the Ketchikan Daily News, successor to the Alaska Fishing News; that on or about

June 30, 1945, the plaintiff and the defendant Sidney Dean Charles, acting on behalf of the Alaska Fishing News, entered into a contract under which the plaintiff agreed to furnish news to the defendants, which was renewed and extended to September 27, 1962; that although the plaintiff performed all the terms and conditions required of it by the defendants, on or about February 14, 1954, repudiated said contract and prevented the plaintiff from further performing, as a result of which the plaintiff lost profits it would have earned amounting to the sum sued for.

By their answer the defendants deny that the contract was extended to September 27, 1962; that the plaintiff performed the terms and conditions required of it; that the defendants wrongfully and wilfully refused to pay for the news furnished or to perform their part of the contract, and also deny that they repudiated the contract although admitting that they have discontinued accepting news from the plaintiff. The denial of these allegations of the complaint by the defendants casts upon the plaintiff the burden of proving them by a preponderance of the evidence.

By way of affirmative defenses the defendants allege that by said contract the plaintiff undertook to furnish to the Alaska Fishing News an adequate news service covering all news of national importance regularly published in Alaskan papers; that although the rate agreed to be paid was increased from time to time by the plaintiff, it failed to furnish an adequate news service as agreed, as a consequence of which the defendants were unable to compete

with other papers, and that notwithstanding the promises of the plaintiff to improve its service, it failed to do so. It is further alleged that the Pioneer Printing Co., although it accepted the news which the plaintiff continued to supply until February 14, 1954, and paid therefor in full, never agreed to the terms and conditions of the contract. The denial of these allegations by the plaintiff throws the burden of proving them by a preponderance of the evidence upon the defendants.

The answer also sets forth a counterclaim against the plaintiff for \$368.70, which is admitted by the plaintiff.

It will thus be noted that the plaintiff contends that the defendants, on or about February 14, 1954, breached the contract by refusing to accept its news, whereas the defendants contend that for a long time prior thereto the plaintiff had failed to furnish the news which it had agreed to furnish, and thereby breached the contract. The first question for your decision, therefore, is whether the plaintiff or the defendants breached the contract.

No. 3

The burden is on the plaintiff of proving its allegation that the defendants breached the contract; that it was damaged by reason of loss of profits, and the amount thereof. Conversely, the burden of proving the defendants' allegation that the plaintiff breached the contract is on the defendants.

No. 4

You are instructed that one who has been wrongfully deprived of the profits that he would have earned under a contract may recover as an equivalent or by way of damages the amount he would have earned and been entitled to recover on performance of his part of the contract less the amount it would have cost him to perform the contract. Therefore, if you find that the defendants wrongfully breached the contract, you may allow the plaintiff damages from February 15, 1954, to September 27, 1957, for the amount plaintiff would have earned during that period, less the amount it would have cost the plaintiff to perform its part of the contract, and less \$368.70, the amount of the defendants' counterclaim, which is admitted by the plaintiff. In this connection your attention is directed to the fact that although the plaintiff claims damages for the period ending September 27, 1962, the Court instructs you as a matter of law that the term of the contract would expire five years earlier, to wit, September 27, 1957. Since this diminishes the period for which damages are claimed by the plaintiff by five years, the amount sued for would be diminished accordingly. You should bear this in mind in fixing the amount of damages, if you find that the plaintiff is entitled to recover damages.

In determining the amount of damages, if you find the plaintiff is entitled thereto, you may consider the rates in effect and the net profits at the time of the breach, the probability of change dur-

g the period referred to in the rates, the cost of
ing business, and the margin of profit as well
s the probability or improbability that the defend-
nts would remain in business. On the other hand,
you find from a preponderance of the evidence that
e plaintiff failed to furnish the defendants with
e news agreed upon, then you would be warranted
a finding that the defendants were justified in
escinding the contract and your verdict should be
or the defendants. The defendants contend that
ews of local importance was frequently omitted
om that transmitted to them, which prejudiced
em in the operation of their newspaper business
nd in competing with the rival newspaper. If you
nd that such news was omitted from time to time,
nd that in omitting such news the plaintiff failed
o supply the news it had contracted to supply, you
ould be warranted in finding that the defendants
ere justified in rescinding the contract, and that
e plaintiff was not entitled to recover damages.
n determining whether the defendants were justi-
ed in rescinding the contract, you should consider
e evidence relating to the omission of news, con-
dered in conjunction with all the other evidence
a the case.

No. 5

You are also instructed, as a matter of law, that
e corporate and individual defendants have, by
eir acts and conduct, adopted the contract between
e plaintiff and the Alaska Fishing News and are
ound by it just as though they had originally ex-
ecuted it.

No. 6

In a civil case, such as this is, the burden of proof rests upon the party holding the affirmative with respect to any issue, and under that rule he is required to prove such issue by a preponderance of the evidence. By a preponderance of the evidence is meant the greater weight of the credible evidence, that evidence which in your judgment is the better evidence and which has the greater weight and value and the greater convincing power. This does not necessarily depend on the number of witnesses testifying with respect to any question of fact, but it means simply the greater weight or the greater value and convincing power and which is the most worthy of belief; and so, after having heard and considered all the evidence in the case on any issue, if you are unable to say upon which side of that issue the evidence weighs the more heavily, or if the evidence is evenly balanced on any particular issue in the case, then the party upon whom the burden rests to establish such issue must be deemed to have failed to prove it.

No. 7

The opening statements and the arguments of counsel are not evidence, and they are not binding upon you. You may, however, be guided by them if you find that they are based on the admitted evidence and appeal to your reason and judgment, and are not in conflict with the law as set forth in these instructions.

No. 8

You are the judges of the credibility of the witnesses and of the weight to be given to the testimony of each. You must receive and consider the testimony of each witness in the light of all the evidence, applying thereto the law as given to you in these instructions. You have a right to determine, from the appearance of the witnesses on the stand, from their manner of testifying, from their apparent candor and fairness, from their interest or lack of interest, if any, in the result of this case, from their apparent intelligence or lack of intelligence, and from all the other facts and circumstances proved on the trial, which witnesses are the more worthy of belief.

No. 9

You are to consider these instructions as a whole. It is impossible to cover the entire case with a single instruction, and, therefore, you should not single out one particular instruction and consider it by itself.

Your duty is to determine the facts of the case from the evidence submitted, and to apply to these facts the law as given to you by the Court in these instructions. The Court does not, either in these instructions or otherwise, wish to indicate how you shall find the facts or what your verdict shall be, or to influence you in the exercise of your right and duty to determine for yourselves the effect of evidence you have heard or the credibility of witnesses.

You must not allow sympathy or prejudice to influence your verdict.

No. 10

The law requires that all twelve jurors must agree upon a verdict before one can be rendered.

While no juror should yield a sincere conviction, founded upon the law and the evidence of the case, merely to agree with other jurors, every juror, in considering the case with fellow jurors, should lay aside all undue pride or vanity of personal judgment, and should consider differences of opinion, if any arise, in a spirit of fairness and candor, with an honest desire to get at the truth, and with the view of arriving at a just verdict because the law contemplates that the verdict shall be the product of the collective judgment of the entire jury.

Accordingly, no juror should hesitate to change the opinion he has entertained, or expressed, if honestly convinced that such opinion is erroneous, even though in so doing he adopts the views and opinions of other jurors.

No. 11

Upon retiring to your jury room you will select one of your number foreman, who will speak for you and sign the verdict unanimously agreed upon.

You will take with you to the jury room these instructions, together with the exhibits, and two forms of verdict, which are self-explanatory.

If you agree upon a verdict during court hours, that is, between 9 a.m. and 5 p.m., you should have your foreman date and sign it and then return it immediately into open court in the presence of the

entire jury, together with the exhibits and these instructions, and the unused form of verdict. If however, you do not agree upon a verdict during court hours, the verdict, after being similarly dated and signed, must be sealed in the envelope accompanying these instructions. The foreman will then keep it in his possession unopened and the jury may separate and go to their homes, but all of you must be in the jury box when the court next convenes at 10 a.m., when the verdict will be received from you in the usual way.

Given at Ketchikan, Alaska, this 14th day of April, 1955.

/s/ GEORGE W. FOLTA,

District Judge.

Title of District Court and Cause.]

VERDICT NUMBER ONE

We, the jury, duly impanelled and sworn to try the above-entitled cause, find for the plaintiff, and assess his damages in the sum of \$368.70, less \$368.70, the amount claimed by the defendants in their counter-claim.

Dated at Ketchikan, Alaska, this 14th day of April, 1955.

/s/ CHAS. M. MARLER,

Foreman.

[Endorsed]: Filed April 15, 1955.

[Title of District Court and Cause.]

VERDICT NUMBER TWO

We, the jury, duly impanelled and sworn to try the above-entitled cause, find for the defendants and, further, that they are entitled to recover \$368.70 on their counter-claim.

Dated at Ketchikan, Alaska, this day of April, 1955.

.....,

Foreman.

[Title of District Court and Cause.]

MINUTES OF THURSDAY, APRIL 21, 1955

This case was called up by counsel of record for entry of Judgment and settlement of costs; both were present. The Court heard counsel following which it was ruled that from the Verdict it was apparent that the jury did not intend to award anything to either party and that being the case, each party should pay its own costs.

Thereupon court was adjourned until tomorrow morning at 10 o'clock.

In the United States District Court for the District
of Alaska, Division Number One, at Ketchikan

No. 7031-A

UNITED PRESS ASSOCIATIONS, a Corpora-
tion,

Plaintiff,

vs.

SIDNEY DEAN CHARLES, PAUL S.
CHARLES, PATRICIA CHARLES, and
PIONEER PRINTING COMPANY, a Cor-
poration,

Defendants.

JUDGMENT

This cause having come on regularly for trial on April 13, 1955, before the Court and a jury impanelled to try the cause, on the complaint of plaintiff and the answer and counterclaim of defendants, and plaintiff's reply thereto, and plaintiff being represented by its attorney, John H. Dimond, and the defendants by their attorney, H. L. Faulkner, of Faulkner, Banfield & Boochever, and evidence having been adduced before the Court and jury on the issues raised by the pleadings of both parties and trial of the case having been concluded on April 14, 1955, and the jury having retired at 5:00 o'clock p.m., on that date to consider of its verdict, and having returned into court on April 15, 1955, at 10:00 o'clock a.m., with its verdict, which is in words and figures as follows, to wit:

“We, the jury, duly impanelled and sworn to try the above-entitled cause, find for the plaintiff, and assess his damages in the sum of \$368.70, less \$368.70, the amount claimed by the defendants in their counter-claim.

“Dated at Ketchikan, Alaska, this 14th day of April, 1955.

“CHAS. M. MARLER,
“Foreman.”

which verdict was received in Open Court and read by the Clerk of the Court in the presence of the jury.

It Is Therefore Hereby Ordered and Adjudged:

1. That the plaintiff take nothing by its complaint, in which it demanded the sum of \$21,489.57 from the defendants, and

2. That defendants take nothing by their counter-claim in the sum of \$368.70, and

It Is Further Ordered that neither party recover costs or disbursements or any attorney's fee herein.

Done in Open Court this 22nd day of April, 1955.

/s/ GEORGE W. FOLTA,
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed April 22, 1955.

[Title of District Court and Cause.]

MOTION

Under Rule 59, Federal Rules of Civil Procedure—

1. Plaintiff moves the court to set aside and open the judgment entered herein on April 22, 1955, and pursuant to provisions of Rule 52, to make its findings of fact and conclusions of law and direct the entry of a new judgment.

The reasons for this motion are that the court erred in ordering that this case be tried by a jury, and such error can be avoided or corrected by the action of the court in either treating the jury's verdict as advisory or ignoring it entirely and making its own independent findings of fact, conclusions of law and judgment.

2. If the court should deny the relief sought in paragraph 1 of this motion, then in order to avoid a waiver of the right to demand a new trial within the ten days prescribed by Rule 59 (b), plaintiff now moves the court for a new trial upon the following grounds:

(a) The court erred in entering its order of April 12, 1955, in which a trial by the jury was ordered. The right to a jury trial in this action had been waived by defendants, and Rule 39(b) does not give the court the right or the authority, *sua sponte*, to order a jury trial where there has been such a waiver.

(b) The court erred in giving to the jury Instruction No. 4.

(c) The jury's verdict, so far as the amount of damages awarded plaintiff is concerned, is grossly inadequate. The weight of the evidence in this case, which was uncontradicted, shows conclusively that there were some substantial damages, and the verdict shows that the jury simply ignored the evidence in this case.

(d) The verdict, so far as the amount of damages awarded plaintiff is concerned, is contrary to the law and the evidence.

3. Plaintiff moves the court to open and set aside the judgment entered herein on April 22, 1957, and to direct entry of judgment for plaintiff in the amount of \$21,489.57, together with plaintiff's costs and attorneys' fees.

The reason for this motion is that (a) the court erred as a matter of law in holding that the contract between plaintiff and defendant was extended by its terms to only September 27, 1957, whereas, in fact and as a matter of law, the term of the contract had been extended to September 27, 1962; and (b) the evidence shows clearly that there is no genuine factual issue as to the amount of plaintiff's recoverable damages, which are, as plaintiff has alleged in his complaint and has proved, \$21,489.57, and therefore, the court, under Rule 56, may order that judgment be ordered for plaintiff in the amount.

Dated at Juneau, Alaska, this 23rd day of April, 1955.

/s/ JOHN H. DIMOND,
Attorney for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed April 25, 1955.

[Title of District Court and Cause.]

MINUTES OF THURSDAY, MAY 20, 1955

At this time the court ruled that plaintiff's Motion to vacate the judgment or grant a new trial would be denied.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is given that United Press Associations, plaintiff above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on April 22, 1955.

Dated: June 10, 1955.

/s/ JOHN H. DIMOND,
Attorney for Plaintiff.

[Endorsed]: Filed June 10, 1955.

[Title of District Court and Cause.]

COST BOND ON APPEAL

The above-named plaintiff, United Press Associations, as principal, and the United States Fidelity & Guaranty Company, a Maryland corporation, surety, jointly and severally acknowledge that they and their successors and assigns are jointly and severally bound unto the above-named defendants the sum of \$250.00.

The condition of this bond is as follows:

Whereas, the plaintiff, United Press Association has appealed to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on April 22, 1955;

Now, Therefore, if the said plaintiff, United Press Associations, shall prosecute its appeal to effect and pay all costs that may be adjudged against it if the appeal is dismissed or if the judgment is affirmed then this bond shall be void; otherwise, to be and remain in full force and effect.

Dated at Juneau, Alaska, this 21st day of June, 1955.

UNITED PRESS
ASSOCIATIONS,

By /s/ JOHN H. DIMOND,
Attorney for United Press
Associations.

[Seal]

UNITED STATES FIDELITY
& GUARANTY CO.,

By /s/ R. E. ROBERTSON,
Agent and Attorney in Fact.

Executed in the presence of:

/s/ EILEEN ROBERSON,

/s/ MARTHA SWEET.

[Endorsed]: Filed June 22, 1955.

[Title of District Court and Cause.]

ORDER

Upon consideration of the stipulation, dated June 16, 1955, between the attorneys for the respective parties to this action, it is hereby Ordered:

That the time for filing the record on appeal and docketing the appeal in this action in the United States Court of Appeals for the Ninth Circuit is extended to and including September 1, 1955.

Dated at Anchorage, Alaska, this 20th day of June, 1955.

/s/ J. L. McCARRY, JR.,
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed and entered June 20, 1955.

[Title of District Court and Cause.]

STIPULATION RE RECORD ON APPEAL

It is hereby stipulated and agreed between Jo Dimond, attorney for the plaintiff-appellant and Faulkner, Banfield & Boochever, attorneys for defendants-appellees in the above-mentioned case, that in transmitting the record on appeal to the United States Court of Appeals for the Ninth Circuit, the Clerk of the above-entitled court shall send original exhibits for the reason that they are many in number it would be impractical to make copies of all of them.

It is further stipulated that there be included in the record on appeal all interrogatories, requests for admissions and answers to interrogatories and requests.

Dated at Juneau, Alaska, July 7, 1955.

/s/ JOHN H. DIMOND,
Attorney for Plaintiff-
Appellant.

FAULKNER, BANFIELD &
BOOCHEVER,

By /s/ H. L. FAULKNER,
Of Attorneys for Defendants
Appellees.

[Endorsed]: Filed July 8, 1955.

[Title of District Court and Cause.]

STIPULATION

It is stipulated between the undersigned as follows:

1. That the following portions of the record on appeal in this cause may be considered in original form by the United States Court of Appeals for the Ninth Circuit without being printed in the printed transcript of record:

a. Plaintiff's Exhibits Nos. 4, 6, 7 and 8.

b. Defendants' Exhibits Nos. A, B, C, D, E, F, H. and I, and defendants' Exhibit G with the exception of that portion consisting of a letter, dated November 14, 1953, from M. J. Flood to United Press Associations.

2. That in printing the record to be used in the appeal of this cause to the United States Court of Appeals for the Ninth Circuit, the title of the court and cause in full shall be omitted from all papers except from the first page of the record, and that there shall be inserted in place of such titles on all papers used as part of such record the words: "Title of District Court and Cause"; and that all endorsements on such papers used as part of such record may be omitted except the Clerk's filing marks and admissions of service.

Dated: August 16, 1955.

/s/ JOHN H. DIMOND,

Attorney for Plaintiff-
Appellant.

FAULKNER, BANFIELD &
BOOCHEVER,

By /s/ R. BOOCHEVER,
Attorneys for Defendants-
Appellees.

[Endorsed]: Filed August 16, 1955.

In the U. S. District Court for the District of
Alaska, Division Number One, at Juneau
No. 7031-A

UNITED PRESS ASSOCIATIONS, a Corpora-
tion,

Plaintiff,

vs.

SIDNEY DEAN CHARLES, PAUL
CHARLES, PATRICIA CHARLES, and t
PIONEER PRINTING COMPANY, a Co
poration,

Defendants.

REPORTER'S TRANSCRIPT OF RECORD

Be It Remembered, that on the 24th day of Se-
ptember, 1954, court having convened at 9:30 o'clock
a.m., at Juneau, Alaska, the above-entitled cau-
se came on for hearing on a motion for a jury trial; t
Honorable George W. Folta, United States Distri-
ct Judge, presiding; the plaintiff appearing by Jol
H. Dimond, its attorney; the defendants appearing

by H. L. Faulkner, their attorney; arguments on the motion were made by respective counsel; and the Court made the following statement:

The Court: I was just going to remark that questions of this kind have arisen a great many times in Anchorage, and Judge Dimond, for a year or so after the Rules went into effect, was very indulgent in exercising the discretion vested in him under Rule 39, but he finally wrote an opinion in which he [1*] declined thereafter, except for good reason, to grant a jury trial where there was a failure to demand it within ten days, and that has been the consistent practice ever since, and I have not only followed that practice but have made decisions of that kind or ruled in accordance therewith before Judge Dimond wrote his opinion, and I feel that uniformity of decision demands that this motion be denied.

Thereafter, on the 12th day of April, 1955, court having convened at 2:00 o'clock p.m., at Ketchikan, Alaska, the above-entitled cause came on for hearing; the Honorable George W. Folta, United States District Judge, presiding; the plaintiff appearing by John H. Dimond, its attorney; the defendants appearing by H. L. Faulkner, their attorney; and the following proceedings were had:

Mr. Dimond: If the Court please, in the case of the United Press against Charles, No. 7031-A, the Court will recall in September of 1954, the defendants' counsel moved for a jury trial, having waived a jury trial by failure to file a request within ten

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

days, and after argument the Court denied the request, and, presumably, although no reasons were stated, the denial was upon the ground or for the reason that either the case was particularly triable by the Court and should not be for the jury or else that the Court simply decided that once a waiver had been made no further relief in that way would be granted just on the simple request. [2]

Now, I have been informed since I came to Ketikan, that a jury list has been called for tomorrow for this case. It is the first notice that plaintiff has received of this, and I want to object to the Court's determination that this case should be tried by jury in view of the fact that the Court in September made a definite and particular decision that there would be no jury.

I have prepared the case for the plaintiff in the last few months and particularly the last few weeks on the theory that there would be no jury, and I think the Court is aware of the fact that to a certain extent the manner of preparation and presentation is different when a jury is called and when one is not. I am particularly concerned about this because I have two or three witnesses, which I thought were important in this case, whose depositions I took, and I would not have taken the depositions if I had known there would be a jury trial. I think it would have been much to the plaintiff's advantage to have these people here personally. I think it would make no difference as far as the Court is concerned, but as far as the jury is concerned, if they can size up the witness and hear him talk,

makes a big difference, from reading the dry words of the deposition.

I would like to refer the Court to the case of Hargrove against American Central Insurance Company in 125 Federal Second at Pages 225 and 228. The Tenth Circuit Court [3] of Appeals in 1942 rendered a decision on this point and held that the Court under Rule 39 (b) does not have the right to order a jury trial on its own initiative when there has been a waiver by one of the parties unless upon a motion by the party.

Now, the motion has been made. It was made last September but was denied, unless the Court considers a motion right at this moment. I think this case is authority for the proposition that the Court does not have the discretion in this case to order the trial by jury. At least without the definite and specific motion by one of the parties that a motion be made at this late date, I certainly want to raise an objection to it because it is a renewal of a motion that was made a long time ago and we have been lulled into the feeling that there would be no jury trial and have prepared our case accordingly. and I think this is asking too much of the plaintiff under these conditions to have a trial by jury, and I would like to request the Court respectfully that the Court change its opinion on the matter that it took up yesterday and not have a jury trial for this case which is starting tomorrow morning.

The Court: Do you wish to be heard?

Mr. Faulkner: No. It is a matter of indifference to me, your Honor, but I think counsel is mistaken,

though, about the procedure. I applied for a jury trial last September, and the Court decided that the Court would try the case, and I made no further application. I made no motion to the Court for a jury [4] trial at this time. I certainly wouldn't have done that without giving Mr. Dimond notice, and I assumed that there wouldn't be any jury.

But my understanding of the matter is, although the Court hasn't expressed his opinion, but my understanding is that the Court is proceeding under Rule 39 (b), which gives the Court the right to call a jury in its own discretion, and I assumed that was the procedure that your Honor was taking. It doesn't make any difference to us.

The Court: Well, the Court intended to and will enter an order reciting the reasons for proceeding under Rule 39. I think that developments, subsequent to the occurrence that counsel for the plaintiff refers to, justify the action taken by the Court on its own motion. Just to make the record complete the Court will enter an order to that effect.

Mr. Faulkner: If the Court please, I would like at this time to ask leave to interline in the First Affirmative Defense on Page 2 of the Answer another sentence. I think the allegation is sufficient but that First Affirmative Defense is: "That the plaintiff has not qualified to do business in the Territory of Alaska, and had not so qualified at any of the times mentioned in the complaint and it is now qualified and is not entitled to bring or maintain this action; that it has not filed its articles

incorporation, financial statement or annual reports required by law." Now, I thought perhaps [5] it would make that a little more definite if we added to that, these words: "It has paid no corporation taxes, income, or license taxes, although it was doing business in Alaska at all times mentioned in the pleadings." Do you have any objection to that?

Mr. Dimond: I have no objection, your Honor.

Mr. Faulkner: It doesn't add much to it, but it makes it more definite.

The Court: It may be amended, then.

Thereafter, on the 13th day of April, 1955, court having convened at 10:00 o'clock a.m., at Ketchikan, Alaska, the above-entitled cause came on for trial before a jury; the Honorable George W. Folta, United States District Judge, presiding; the plaintiff appearing by John H. Dimond, its attorney; the defendants appearing by H. L. Faulkner, their attorney; a jury was duly empanelled and sworn to try the cause; respective counsel agreed that should it become necessary to excuse any member of the jury during the trial of this case they would proceed with less than twelve jurors; opening statements were made by respective counsel; the jury was duly admonished by the Court, and thereupon court was recessed for five minutes, reconvening as per recess with all parties present as heretofore, and the jury all present in the box; whereupon the following proceedings were had:

The Court: You may proceed. [6]

Plaintiff's Case

DAVID F. BELNAP

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Dimond:

Q. Will you please state your name and address?

A. I am David F. Belnap of Seattle, Washington.

Q. By whom are you employed?

A. The United Press Associations.

Q. The plaintiff in this case? A. Yes, sir.

Q. And what are your duties in this employment?

A. I am the Northwest Manager for the United Press.

Q. What does that encompass, Mr. Belnap?

A. I am in charge of the business of the United Press in the State of Washington, Northern Idaho, Montana and Alaska.

Q. And it is your duties to be in charge of and responsible for contracts for news reports dealing with Alaska publishers? A. That is correct.

Q. You are the one who is responsible for those reports that are sent to Alaska; is that true?

A. Yes, sir.

Q. How long have you been employed by the United Press in the Seattle office? [7]

A. Since December, 1952.

Q. In the same capacity that you are now?

A. Yes, sir.

(Testimony of David F. Belnap.)

Q. What previous positions, if any, have you held with your present employer?

A. Previous to December, 1952, I was manager for the United Press in the Central Pacific, with headquarters in Honolulu, Hawaii. Previous to that I was manager for United Press in the State of Montana. I was prior to that employed as the Washington State political editor for the United Press with headquarters at Olympia, Washington. I was previous to that headquartered at Spokane, Washington, as bureau manager for United Press, and prior to that I was employed by the United Press at Salt Lake City.

Q. Have you had any other experience in newspaper or news gathering business, besides with United Press?

A. Yes, sir. For a brief time I was employed on the Ogden, Utah, Standard Examiner as a reporter and subsequently as a copy reader, and I was for two and a half years assistant city editor on the old Seattle Star.

Q. And how many years in all have you been engaged in newspaper or news gathering business?

A. About fourteen years.

Q. Have you ever edited news for publication in papers? [8]

A. Yes, I have.

Q. How much experience have you had in that respect?

A. I, as I say, was assistant city editor of the Seattle Star for the period of two and a half years.

(Testimony of David F. Belnap.)

during which time I edited city news for the Seattle Star.

Q. And then your experience with the United Press has been mostly in transmission of news?

A. That is correct; gathering and transmission of news.

Q. Will you explain to the jury, Mr. Belnap, just what this United Press Associations is, what it does and briefly so they will get the picture of what the U.P.A. means?

A. Yes. United Press Associations is an organization of news correspondents, editors, photographers, telegraphers. It is a world-wide organization and its business is to collect news and sell that news to radio stations, newspapers, television stations, magazines, and other media whose legitimate function, either in whole or in part, is to supply news to the public. We have offices around the world. These offices are all called bureaus. We have eighty-two offices, for instance, in the United States. Each one of those is called a bureau. We have seventy-nine bureaus in foreign countries. Each one of these bureaus serves as a central collection point for news in its particular area. This news is gathered and transmitted by leased wire, by radio teletype machine, by [9] Morse telegraphy, by mail to our various clients, to the radio stations and the newspapers and others who subscribe and buy our services.

Q. Mr. Belnap, are you familiar with a certain agreement between the United Press and the Alaska Fishing News of Ketchikan, Alaska, which is dated

(Testimony of David F. Belnap.)

June 30, 1945? A. Yes, sir.

Q. Attached to the plaintiff's complaint is a copy, Exhibit A, of this contract, and you will note in looking at this contract that it calls for United Press to furnish to the Alaska Fishing News its regular news report, a sixty-minute transmission each day for six days a week; is that correct?

A. It says, "its regular news report and agrees as far as practicable to deliver to the publisher such news report by radio teletype for one hour daily on each of the six regular publication days each week"—yes.

Q. That is a carbon copy of the contract entered into between these parties? A. Yes, sir.

Q. Now, are you familiar with what a regular news report consists of, and, if so, would you please explain it to the Court and jury?

A. Yes. A regular news report is the news gathered by the United Press each day. [10]

Q. What are the mechanics of choosing the particular news and sending it to the newspaper publisher? Just how do you go about doing that?

A. Well, we have, for instance, around the world ten thousand correspondents, staff correspondents, editors, photographers, reporters, telegraphers. The news is gathered by the correspondents, staff correspondents. It is filed to the nearest bureau of the United Press. It is edited there and transmitted by a telegrapher, or what we call a teletype operator nowadays, since teletypes have principally replaced the telegraph, onto our wires.

(Testimony of David F. Belnap.)

Q. In a sixty-minute transmission, how many words are transmitted to the newspaper publisher?

A. Teletype machines have a geared speed of approximately sixty words a minute, and in a one hour transmission, approximately thirty-five hundred words of copy are transmitted.

Q. That is your regular news report; is that true? A. Yes, it is.

Q. What does it consist of; I mean, in the nature of the news; what kind of news does it consist of; does it comprise—world news, local news, or what?

A. It comprises world news, sports news, regional news, feature news.

Q. Was it your duty as manager of the Northwest Division of [11] United Press to furnish this regular news report to the Ketchikan News?

A. Yes, sir.

Q. That has been your duty since 1952?

A. That is right.

Q. Is all the news that you send to the, that you have sent in your time to the Ketchikan Daily News was that all transmitted from Seattle?

A. Yes, it was.

Q. Was there any of it transmitted from Alaska?

A. Not directly, no; not that I know of.

Q. Well, what do you mean by "not directly"?

A. Well, news from Alaska would be transmitted by our correspondents at various Alaska points to us in Seattle and be edited by us there, since Seattle

(Testimony of David F. Belnap.)

is the nearest bureau to Alaska, and transmitted on regular circuit back to Alaska.

Q. It is all transmitted from Seattle to Alaska?

A. That is right.

Q. Do you have any offices in Alaska?

A. No, we don't.

Q. These correspondents, are they regular employees of United Press? A. No, they are not.

Q. How are they compensated? [12]

A. They are called correspondents other than staff correspondents; and, when I say staff correspondents, I mean men employed on the staff of the United Press and paid a regular wage of salary. In addition to men of that kind, we employ a great number of what is called part-time or string correspondents. These people who are—the word “string” is a piece of nomenclature from the newspaper business dating back a number of years—these part-time or string correspondents are people who are, as a rule, regularly employed on a newspaper or a radio station in the particular area in which they live and whose duties for that newspaper or radio station are to gather news for that organization. In addition to that we take them on as part-time correspondents, and they furnish to us certain news that they gather in the ordinary course of their business for the person for whom they work. This news is filed to us for our service.

Q. Now, in addition to the regular news report that you furnished to the Ketchikan Daily News,

(Testimony of David F. Belnap.)

did you render any other service in the way of news?

A. In addition to the one-hour daily transmission called for in the contract here, yes; we supplied the Ketchikan Daily News with a daily air-mail drop.

Q. What is that?

A. Of feature material. Well, it was a daily air-mail [13] package. We call it a drop in our business instead of air-mail package. And in it was a certain number of feature and what is called time-copy stories.

Q. Was there any additional charge assessed against the News for this air-mail drop?

A. No, there wasn't.

Q. In addition to the rate in the contract?

A. No. We also supplied the News with what we call bulletin protection. Their file moved out of Seattle from 11:00 a.m. to 12:00 each day, Pacific Standard Time. When a news story of great importance occurred and moved on our wires after the file with Ketchikan News was cleared at noon, we were—we sent a brief telegram overhead to the News on an irregular basis, I mean, depending on the news breaks, for their edition.

Q. Can you state whether the news report that you furnished the Ketchikan Daily News under the agreement that you have before you was furnished as a part of the regular and customary business activities of the United Press? A. Yes, it was.

Q. When was the first time since you have been

(Testimony of David F. Belnap.)

in the Seattle office that you ceased furnishing the news report to the Ketchikan Daily News?

A. We ceased furnishing the news report to the Ketchikan Daily News after February 18, 1954. [14]

Q. Will you state why you ceased furnishing the news at that time?

A. Yes, I can, because we had received a telegram from Mr. Paul Charles telling us that he would not accept any more news from us and advising us that he was taking out our teletype machine and shipping it back to Seattle.

Q. Can you state whether United Press Associations at that time and since that time was ready, willing and able to furnish its news report to the Ketchikan News? A. Yes, it was.

Q. Was the nature of this termination such that you considered that you were relieved of any further duties to perform thereunder?

A. Yes, it was. When they took our teletype machine out, it rendered us incapable of performing.

Q. At any time prior to January, 1954, did you receive from the Ketchikan News or Pioneer Printing Company or any of the Charles family or Mrs. Flood or any person connected with the newspaper any notice or indication—I would like to change that—any notice that they desired to terminate the contract pursuant to the termination provisions contained in the contract? A. No, sir.

Q. When was the first notice that you ever received regarding such a wish to terminate the contract? [15]

(Testimony of David F. Belnap.)

A. You mean directly from the Ketchikan News?

Q. Yes.

A. I received a letter in January, dated, I think around January 14th, from Mrs. Flood, business manager of the Ketchikan News, which letter was sent in reply to a telegram from me. I might explain, if you want me to, how I came about to send that wire.

Q. Yes; I wish you would.

A. I received, early in January of 1954, a communication from the New York office of the United Press. In that communication I was told that the New York office had received from Mrs. Flood a letter in which she mentioned a letter she said she had sent the United Press in November. This advice that I had from New York told me that they had never received any letter from Mrs. Flood in November, that she had sent with her letter in January, a copy of that alleged letter, and that that copy said that she wished to terminate the agreement. I wired Mrs. Flood after receiving that, and in my wire I said I didn't understand what she meant by a cancellation of the agreement since the agreement had just recently been renewed and that it was not possible to cancel it at that time. She replied then to my wire with a letter dated, I think the 14th—I could look it up—it was dated, I think the 14th of January, and in that letter she said that she [16] realized she hadn't given proper notice but, nevertheless, she wanted to terminate the

(Testimony of David F. Belnap.)

agreement. And that is the first that I ever heard that they wanted to terminate the agreement.

Q. Do you know what it costs the United Press to hire a teletype operator in Seattle, to send the news to the Ketchikan Daily News?

A. Well, I know what we are paying them now.

Q. What are you paying them now?

A. We are paying them, oh, the average is about one hundred and fifty dollars a week.

Q. You are paying one man one hundred and fifty dollars a week?

A. Yes; that is a telegrapher, a teletype operator.

Q. And if he works only one hour a day, do you pay him just that one hour?

A. If he works only one hour a day, we have to pay him a full week's salary.

Q. For the full week?

A. They work a thirty-seven-and-a-half-hour week under the union labor contract we have with them.

Q. What rate were you receiving from the Ketchikan News at the time of the termination in February, 1954?

A. Sixty-one dollars and forty-five cents a week.

Q. And you were paying the operator one hundred and [17] forty-five dollars a week?

A. We were paying, yes, our Seattle operators an average of one hundred and fifty dollars a week—one hundred and forty-five to one hundred and

(Testimony of David F. Belnap.)

fifty dollars. That included overtime for work on the sixth day.

Q. What other newspaper clients do you have in Alaska?

A. We have the Anchorage Daily News.

Q. That is the only one? A. Yes.

Q. Do you have some radio stations?

A. Yes; we have one radio station, now.

Q. Does that require a separate operator or the same operator to send the news report to the Anchorage News and the Ketchikan News?

A. Well, a night operator is required for our radio work because we transmit—of course, a radio station broadcasts at night as well as in the daytime and the transmissions have to be—

Q. You have two operators in Seattle, then?

A. No. At present we have three operators in Seattle.

Q. To send to Alaska?

A. Two of which are required for our Alaska business.

Q. During the time that you were in the Seattle office from 1952, up until February, 1954, did you receive from the Ketchikan News or from any person on its behalf any [18] complaints as to the type of service that you were rendering?

A. I never received any complaints about the service until I talked with Bud Charles in February of 1950.

Q. February, 1950?

A. February, 1954; excuse me.

(Testimony of David F. Belnap.)

Q. You received no letters?

A. I received no letters; no.

Q. If there are any negotiations or correspondence, particularly complaints about the type of service, from the Alaska publisher sent to the, say, New York or San Francisco office of the United Press, would it be customary or common practice of the organization that copies be sent to you if they affect Alaska business? A. Yes.

Q. You received no complaints all the time you were there? A. That is correct.

Q. Until February, 1954.

A. Until I talked with Bud Charles in Seattle in February of 1954.

Q. Had you talked with Mrs. Flood prior to that time? A. Yes, I had.

Q. When was that?

A. Mrs. Flood came to Seattle in July of 1953, if I remember correctly, late in July. [19]

Q. Did she register any complaints with you at that time?

A. Yes, she did; not about the service, however; about the rate.

Q. Oh, about the rate, but not the service?

A. Yes.

Q. What is the total gross revenue that United Press Associations receives, or what—can you specify a date, for example, a certain month in 1953, where you know that the total gross revenue from Alaska business was so much money? Do you have any figures on that?

(Testimony of David F. Belnap.)

A. Yes. At the height, rather, at the period of time—the period of time that we received the most money, the most gross revenue for our services to Alaska was late in the year of 1953. In December, 1953, our total gross revenue for Alaska was three hundred and six dollars and some odd cents, if I recall correctly.

Q. What was your total cost of teletype operators for Alaska business at that time?

A. Three hundred and eight dollars and some odd cents. That constituted the salary of a day and a night operator.

Q. What were you receiving from the Ketchikan News at that time?

A. Sixty-one dollars and forty-five cents.

Q. Since the termination of the news report to the Ketchikan News have you made any saving on salaries of operators? [20]

A. No, we have not.

Q. You have the same operators that you had before? A. Yes, we do.

Q. Mr. Belnap, you will observe in Paragraph 2 of the contract that the publisher, Alaska Fishing News, agreed that, if the wage scale for union employees was increased, the publisher would pay the increases in union wages to the United Press. Are you familiar with that too?

A. Yes, I am.

Q. Of this contract?

A. That is the second subparagraph 2. I think.

(Testimony of David F. Belnap.)

Q. Can you tell the Court and jury just how that works, when these assessments become necessary, how they are arrived at and how they are assessed against the publishers?

A. Yes; I can explain how they are assessed against the publishers. When the United Press negotiates a union labor agreement which calls for an increase in the salary or salaries being paid to its union labor employees, it has the privilege under the contract of passing along those increases in union wages to its clients, to the radio stations and newspapers who buy its services. This business of passing along the increases in union wages is done on a percentage basis. The percentage that the increase in the union wages of all of its [21] employees covered by the union labor contract, the percentage of that increase, as applied to the total overhead of the United Press, is passed back to its clients in the form of a percentage increase in their rate. In other words, if the United Press raised its union labor salary ten per cent, that would constitute a certain percentage of increase in our overhead and that percentage of increase in our overhead would in the ordinary course be passed back to the clients of the United Press in the form of increases in their rates.

Q. For example, if you had a five per cent assessment and the publisher were paying forty dollars a week, you would increase his rate by five per cent?

A. That is correct.

Q. And that is what this Section 2, Paragraph

(Testimony of David F. Belnap.)

2, means? A. That is correct.

Q. Now, would this—let's call this an assessment by reason of union labor wage increases—would this have anything directly to do with the specific salary of the Seattle operators who were sending these news reports?

A. You mean the union labor assessments which were made against the Ketchikan News?

Q. Yes.

A. In the course of our contractual life would they have any direct relation? No; they didn't. The same percentage [22] increase was passed along to the clients in New Orleans, Louisiana.

Q. Assuming that they had not been required to use teletype operators to send news reports to the Ketchikan News and they could have been sent some other way, would these assessments, which we have been talking about, still have been made under its contract? A. Yes.

Q. So the salary of that operator was something apart?

A. The salary of the operator, which we required to send a news report to the Ketchikan News and which was charged back against the Ketchikan News, was apart from the assessments which you mentioned.

Q. How long has the Anchorage Daily News been receiving the news report?

A. Since about the late spring of 1948.

Q. And do you know what they pay for their

(Testimony of David F. Belnap.)

report? A. I know what they pay now.

Q. What is it?

A. Eighty-three dollars and nine cents a week.

Q. How much do they get in the way of time?

A. They get ninety minutes a day.

Q. You stated that you met Mrs. Flood and she complained about the rates. Will you tell us what that was about?

A. Yes. Mrs. Flood came to Seattle in July, 1953, late in [23] the month, if I remember correctly, and in the course of her visit she complained to me about the union labor assessment which we had levied in April or May of that year.

Q. What did you do about the complaint?

A. I passed her complaint along to the front office of the United Press.

Q. And was any reduction made in the rate?

A. No reduction was made on the rate.

Q. Had that assessment been made under this contract? A. Yes.

Mr. Dimond: That is all I have.

Cross-Examination

By Mr. Faulkner:

Q. Mr. Belnap, you gave us some figures here that I didn't catch. You said in December, 1953, the gross revenue from Alaska was how much—three hundred and something?

A. Three hundred and—I have a note on that here. May I look at it?

(Testimony of David F. Belnap.)

Q. Yes.

A. It was three hundred and six dollars and twenty-four cents.

Q. And what were the expenses?

A. The salaries for operators required for the Alaska business were three hundred and eight dollars and four cents. [24] That is two operators; a day and a night operator. The day operator received one hundred and forty-four dollars and forty-eight cents per week during the month of December, 1953, and the night operator received one hundred and sixty-three dollars and fifty-six cents per week.

Q. That then shows that your expenses, if I understand this right, were almost two dollars more weekly than your revenue; is that correct?

A. That is correct.

Q. Is that for the whole month? Those figures are for the whole month of December?

A. No. Those are weekly figures.

Q. So that those show a difference of expenses above revenue of almost two dollars?

A. That is what my figures would indicate.

Q. A week. Now, Mr. Belnap, let me ask you how the United Press handles the correspondents for instance, from Alaska. On what basis are they paid?

A. They are paid on the basis of the amount of useable copy that they turn into the United Press

(Testimony of David F. Belnap.)

and we are the judge of what copy is useable and what isn't.

Q. And you take those reports in and then you pick out what you think should be sent back to your corresponding newspapers in Alaska, and that is the news they get? A. That is correct. [25]

Q. Now, the United Press picks these correspondents, I suppose, for the various jobs?

A. Yes, we do.

Q. Now, you have been in the Seattle office only a little over two years? A. That is correct.

Q. Who was there before you?

A. In my capacity?

Q. Yes. A. Mr. Richard A. Litfin.

Q. And was Mr. Green there for a while?

A. Yes. Mr. Green was there before Mr. Litfin.

Q. Fred Green? A. Fred J. Green.

Q. Then was a man named Carlson there after Mr. Green?

A. No. Mr. Carlson was Seattle bureau manager.

Q. He was Seattle bureau manager?

A. Yes. He was there at the same time that Mr. Gren was.

Q. Now, in editing these news reports that you get from Alaska and from various other places, do you have any rating as to the value of news to the newspapers with whom you have contracts?

A. Yes. As much as possible we endeavor to supply the newspaper or the radio station with whom we have a contract with the specific type of news that he wishes and [26] consistent with news

(Testimony of David F. Belnap.)

value of course and with ordinary news value. News is a highly relative thing, and the value of a story on one day may not be the same news value as a story on the next day, depending on what other stories broke or were developing or had occurred.

Q. Yes, that is right; but, as a general thing, Mr. Belnap, to a local paper in Alaska the news of first importance would be, I suppose, the local or regional news, wouldn't it?

A. Not necessarily; no.

Q. If there was something important in Alaska, for instance, if the Town of Sitka burned down, that would be very important news to newspapers in Alaska, wouldn't it?

A. In my judgment it would; yes.

Q. And that would be what the newspapers would expect to get, wouldn't it, a newspaper in the Territory taking your service?

A. Yes; they could logically expect us to supply a story if the Town of Sitka burned down.

Q. Yes; to give some priority to news events of importance in the Territory, important to all the people?

A. That is correct.

Q. And then what would rank next?

A. Well, it is pretty difficult, sir, to answer what would rank next. [27]

Q. I mean in class of news.

A. It is even difficult to determine in class of news because it depends on the news that is breaking on any given, particular day.

Q. Well, for instance, take in the case of Alaska,

(Testimony of David F. Belnap.)

Washington news, Washington, D. C., news would be rather important, any Washington news affecting the Territory, wouldn't it?

A. Yes, it would be.

Q. These hearings on important things, like the aboriginal Indian affairs, and the pulp company contracts, and so on, would be important to this region, wouldn't they?

A. Well, I would, before being able to say how important, have to see the story and know the circumstances, and I wouldn't want to give an opinion on that.

Q. Then foreign news would generally be at the bottom of the list, wouldn't it?

A. Depending on what was happening, of course. If the King of England were assassinated, I would say that would be the top piece of news.

Q. That is right; but as a class, I mean, ordinarily?

A. Ordinarily, I would say, as a class of news, no, foreign news wouldn't be at the bottom. Foreign news in my judgment is important.

Q. Well, if Mr. Molander, one of your witnesses, says that foreign news would be at the bottom, he would be wrong—I [28] mean as a class?

A. Well, I just can't say that as a class of news foreign news would be at the bottom; no, sir.

Q. I mean for a local paper in Alaska?

A. No, sir; I can't say that.

Q. In other words, wouldn't your local news, your local or regional news, of course in the Terri-

(Testimony of David F. Belnap.)

tory, rate first, and your Washington news second, national news third, and foreign news last; wouldn't that be—I mean, as a class?

A. I wouldn't say that; no.

Q. There would be important items in one class——

A. It is a relative proposition. It would depend each day in my judgment on what it was.

Q. Now, you say that you did not receive complaints of the service from the Ketchikan News. You didn't receive any, you said?

A. No, I didn't receive any until I talked with——

Q. You don't mean to say that none were sent?

A. No complaints were received by me.

Q. But, as far as you know, you don't know what Mr. Green received, or Mr. Carlson, or the New York office, do you?

A. No, I don't; that is, I know that no—or, rather, I assume that, if any complaints had been made to the New York office during the time I was in Seattle, they would have [29] let me know about it.

Q. Well, as a matter of fact, from examining the records here and the papers in this case, you know now that they made complaints?

A. Some number of years ago, yes, five or six years.

Q. And acknowledgements of shortcomings were made. Did you ever see any of those?

(Testimony of David F. Belnap.)

A. Yes, I have seen the letters in the file.

Q. Now, you say that you discontinued furnishing news to the Ketchikan News on February 14, 1954?

A. No. We discontinued after February 18th. We sent our last transmission on the 18th of February, 1954.

Q. Well, now, Mr. Belnap, I will hand you a series of drafts—this is in connection with our counterclaim—a series of drafts drawn by the United Press on the Miners & Merchants Bank on the account of the Ketchikan News, and ask if those were drawn after you discontinued the service?

A. Yes. These were drawn, after we discontinued the service, in error by our bookkeeping department in New York, which didn't know that we had discontinued it.

Mr. Faulkner: We will offer these for identification.

Mr. Dimond: No objection.

Mr. Faulkner: As defendants' exhibit for identification. It could be admitted, but this wasn't our case, if you want to admit it that way. [30]

The Court: Since the plaintiff, as I take it, admits this, it seems to me it could be introduced as an exhibit now, or, perhaps, it would be even superfluous to introduce it.

Mr. Dimond: We admit it in our reply to the counterclaim.

Mr. Faulkner: You didn't admit it was due.

(Testimony of David F. Belnap.)

Mr. Dimond: We denied that the amount was due because we figure we are entitled to judgment; if we would win the judgment, we would have to pay it.

Mr. Faulkner: The drafts were drawn. I think—now, let's see.

Mr. Dimond: What I mean—we deny that it was due in the over-all picture.

Mr. Faulkner: There will be a little further testimony about this from Mr. Charles.

The Court: Well, unless they have some other evidentiary value, with the admission of the plaintiff that these should not have been drawn, it seems to me that is sufficient.

Mr. Faulkner: Well, it might be, but the pleadings don't support that, and I don't know whether the jury will remember the testimony without the exhibit. I would rather have the exhibit in—a series of five drafts.

Mr. Dimond: I don't see how it is relevant. [31]

The Court: Well, I will have to instruct the jury that the counterclaim is admitted.

Mr. Faulkner: Then you don't want to admit them now.

Q. (By Mr. Faulkner): Mr. Belnap, you said that you had—you serviced the Anchorage News and had one radio station? A. That is correct.

Q. Where is that? A. Where is the——

Q. Radio station?

A. It is in Anchorage.

Q. Have you in the past few years, I mean,

(Testimony of David F. Belnap.)

during the life of the contract with Mr. Charles and United Press serviced other radio stations in Alaska?

A. Yes, we have. For a period of five years we serviced Radio Stations KENI and KFAR with a half-hour transmission in the evening.

Q. Fairbanks and Anchorage?

A. Fairbanks, and Anchorage; yes, sir.

Q. And you had the Ketchikan News and the Anchorage News? A. That is correct.

Q. Have you had them all at one time?

A. Yes, we did. We had the Ketchikan News, the Anchorage News, the Radio Stations KENI and KFAR—that was under a common contract. It was a single contract for both of them, providing for a one-half hour transmission per day [32] in the evening.

Q. Now, Mr. Belnap, are you familiar with the correspondence between the plaintiff and the defendant in which the plaintiff said that as they added other business in Alaska to the business that they were doing with the Ketchikan News the cost or expenses would be reduced?

A. I am familiar with that correspondence; yes, sir.

Q. Now, was it ever reduced? A. Yes, sir.

Q. It was?

A. Yes. You mean the cost to the Ketchikan Daily News?

Q. Yes. A. Yes, it was.

(Testimony of David F. Belnap.)

Q. I mean the over-all. I know what you mean. You had a number of increases first, didn't you?

A. There were a series of increases in the rates; yes.

Q. And then the reduction of course came out of a part of those increases?

A. No. The reduction came out of the contribution that the Ketchikan News was making toward the salary of the Seattle operator. The understanding was that we would reduce the charge being made to the Ketchikan News, in addition to its rate, for an operator as we added new business.

Q. Now, as you added new business, did you prorate the expenses of transmitting news between the Ketchikan News [33] and the others you served?

A. We were never able to do so. The expenses were always ahead of the additional revenue, and we took the cuts out of our hide.

Q. Didn't the United Press state in a letter that the Anchorage News required service at a different time and, therefore, you couldn't operate successfully—at a different time of day, I mean?

A. That may have been. I would like to see a copy of that letter again. I just don't recall it off hand, but that very well may have been.

Q. All right. Now, do you know that after the Ketchikan News discontinued its service that you serviced the Ketchikan Chronicle for a brief period, a few months?

A. Yes; I am aware of that.

Q. Now, during that few months when you gave

(Testimony of David F. Belnap.)

service to the Ketchikan Chronicle you also gave service to the Anchorage News?

A. That is correct.

Q. And are you familiar with the fact or do you know if they put those on the same channel and transmitted them at the same time?

A. No, they did not.

Q. Oh, they did not?

A. No, they did not. [34]

Whereupon the trial was recessed until 2:00 o'clock p.m., April 13, 1955, reconvening as per recess, with all parties present as heretofore, and the jury all present in the box; whereupon the witness David F. Belnap resumed the witness stand, and the Cross-Examination by Mr. Faulkner was continued as follows:

Q. Mr. Belnap, just one or two more questions. First, this morning you stated that the contract, which is the subject of this action, was dated in June, 1945?

A. I think the original date on it was June, 1945.

Q. I may be mistaken. I stated to the jury that it took effect on September 1, 1945.

A. Well, the date of the contract and the effective date were different. The contract in its first sentence, I think, bears a date in June, as I recall, and the effective date, which is established under Article 8 of the contract, Article 7 or 8, was a later date.

Q. That is the date that is in there?

A. Yes.

(Testimony of David F. Belnap.)

Q. Just to clear that point up. Now, you stated this morning that after—I asked you this morning after the contract with the News was terminated by the News if you didn't then have service to the Anchorage News and the Ketchikan Chronicle for a while. I meant the Fairbanks News Miner. [35]

Mr. Dimond: If the Court please, I wonder—I would like to object to any questions regarding a happening subsequent to the termination date of this contract. This case involves the contract between United Press and Ketchikan News which was terminated on February 14th.

The Court: Well, it would all depend whether the question might elicit or is designed to elicit something that would be of evidentiary value. In other words, relating to a fact or something subsequent, if it happens to be evidentiary, if something goes on before, it is not inadmissible.

Mr. Dimond: Well, I can't see what—I think it is just going far afield—what relation subsequent contracts with other clients had to this particular case.

Mr. Faulkner: The point I made this morning was—I thought I made that clear—was that the United Press contended they could not reduce their expenses in furnishing this service by virtue of having other outlets because they had to furnish the news to these other outlets at different times, and I inadvertently mentioned there the Anchorage News and asked him, as an illustration of that, if they didn't furnish service to the Anchorage News and the

(Testimony of David F. Belnap.)

Ketchikan Chronicle after this particular contract terminated, at the same time and through the same channel, and he said, "No." Now, I want to correct my question and refer to the Fairbanks News Miner instead of the Anchorage News. That is the only purpose. The whole [36] thing is before the Court, only I gave the wrong paper, and had I given the correct paper, Mr. Belnap's answer might be different.

Mr. Dimond: The only thing is, your Honor, on this question of promises to reduce rates, which defendants apparently relied upon, we have not yet in our direct case in chief gone into that subject. We have evidence on that point, what the so-called grounds consisted of, but I don't know whether this is within the scope of direct examination.

The Court: Well, I am inclined to think that the scope of direct examination is not so limited. I think it is within the scope of direct examination. Objection overruled.

Q. (By Mr. Faulkner): Mr. Belnap, I meant to say the Fairbanks News Miner. Now, after you came in charge of the Northwest office, did the United Press furnish service at the same time to the Ketchikan Chronicle for a while and to the Fairbanks News Miner? A. Yes, we did.

Q. Now, did you furnish those at the same hours and through the same channel?

A. We furnished it at the same hour, and whether Alaska Communications Commission used the same channel to deliver it or not I can't say, but

(Testimony of David F. Belnap.)

it was furnished by us and filed by us at the same hour each day; yes.

Q. What you would furnish would be a copy which would be [37] directed to both the Fairbanks News Miner and the Ketchikan Chronicle?

A. Yes, sir.

Q. And that is the way you did it?

A. Yes, sir.

Q. I hand you this and ask you if this was a sample of the way you did it? A. Yes.

Mr. Faulkner: We offer that in evidence as an exhibit.

Mr. Dimond: I don't see how it is relevant, your Honor, to the issue.

Mr. Faulkner: It shows how the news could be furnished, two at the same time. There is some argument here, some evidence—perhaps I am getting a little ahead of it—but there is some evidence or will be that they couldn't do this. I want to show they could and **did do it**.

Mr. Dimond: It sounds more like the defendants' case.

Mr. Faulkner: Well, perhaps it is.

The Court: Well, the only bar to putting it in the defendants' case is if it isn't incidental to a proper cross-examination.

Mr. Dimond: I just didn't want to clutter up the record. [38]

Mr. Faulkner: Well, I don't either.

The Court: The objection is overruled. It may be admitted.

(Testimony of David F. Belnap.)

Mr. Faulkner: It may be that you will want to cut off this top part. It doesn't have any application.

The Clerk: Defendants' Exhibit A.

Mr. Faulkner: I think that is all.

Redirect Examination

By Mr. Dimond:

Q. Mr. Belnap, I have just a couple of questions. When you testified on direct examination that you had received no complaints as to type of service, did you not testify that you had received none, just during your time in Seattle?

A. That is what I testified; yes, sir; in my time in Seattle.

Q. You were not testifying to complaints that had been sent to other persons prior to your coming to Seattle?

A. No, I was not.

Q. How long has United Press Associations been in existence, Mr. Belnap?

A. Since 1907.

Q. About how many clients do they have now?

A. About four thousand four hundred throughout the world.

Q. And is the contract that you testified about this morning, [39] the printed form of contract which is attached to the complaint, is that the same form used with practically or all of your clients?

A. That is correct; all of our newspaper clients.

Q. Did your type or class of news report or type of news sent to the Ketchikan Daily News change

(Testimony of David F. Belnap.)

in any great way or in any way at all, say, in January and February, 1954, as compared with the type or class which was sent in previous years, at least during your time? A. No, sir.

Q. Will you explain one thing? What do tolls consist of?

This contract says something about payment of tolls.

A. The tolls are the charges made by the transmission company for transmitting the files.

Q. And who is the transmission company in Alaska? A. Alaska Communications System.

Q. What tolls are charged or have been charged to the Ketchikan papers?

A. I can give you their time press tariff which is four dollars an hour.

Q. And the publisher pays that under these contracts between the United Press and their clients?

A. Yes. It is on a tolls collect basis.

Mr. Dimond: That is all I have.

The Court: How long has the United Press used this [40] form of contract?

A. For as long as I have been in the company, sir, and, as far as I know, a good deal longer.

The Court: Has it ever been litigated?

A. Yes, it has been litigated.

The Court: That is all.

(Witness excused.) [41]

* * *

DEPOSITION OF CARL B. MOLANDER

Whereupon, the deposition of Carl B. Molander was read as follows—questions by Mr. Dimond and answers by Mr. Behnap:

Q. Will you state your name?

A. Carl B. Molander.

Q. Where do you live?

A. 3450-80th Street, Jackson Heights, Long Island, N. Y.

Q. By whom are you employed?

A. United Press Associations.

Q. How long have you been employed by U.P.A.?

A. Thirty-three years.

Q. What position do you hold with U.P.A.?

A. Assistant General Sales Manager.

Q. How long have you held your present position?

A. Since October, 1952.

Q. What positions did you hold previous to your present position?

A. Assistant Business Manager and Commercial Manager.

Q. Are you familiar with a certain agreement by and between U.P.A. and the Alaska Fishing News of Ketchikan, Alaska, which is dated June 30, 1945?

A. I am.

Q. Do you have that agreement before you?

A. Yes. [49]

Q. Is that the original executed agreement between U.P.A. and the Alaska Fishing News?

A. It is.

(Deposition of Carl B. Molander.)

Q. Are you the Carl B. Molander who witness the agreement on behalf of U.P.A.?

A. I am.

Q. And this same agreement is executed on half of the Alaska Fishing News by Sidney De Charles, the Editor and Publisher? A. It

(Reading suspended.)

Mr. Dimond: This is Mr. Wick speaking.

(Reading resumed by plaintiff.)

Mr. Wick: I will ask that the agreement marked for identification as Plaintiff's Exhibit 1

Q. Handing you what has been marked for identification as Plaintiff's Exhibit 1, I will ask you when service was started to the publisher under the agreement? A. On October 3, 1945.

Q. Now, I notice that there are twelve letters and other memoranda attached to the agreement. Are they affixed to the basic agreement because they relate thereto? A. Yes.

Q. When did the original term of Plaintiff's Exhibit 1 start and expire according to the face of the agreement? [50]

A. It started September 1, 1945, to expire August 31, 1948.

Q. Was that original expiration date extended in any way by a delay in daily publication of Defendants' newspaper, and if so, to what date?

A. Yes, until October 3, 1948.

Q. And that extension was pursuant to Par

(Deposition of Carl B. Molander.)

graph 12 of the agreement? A. Yes.

Q. Was the agreement automatically renewed by its terms, and if so, for what periods and what dates?

A. Yes, from October 3, 1948, to October 3, 1953, and then again from October 3, 1953, to October 3, 1958.

Q. And those renewals were pursuant to Paragraph 8 of the agreement? A. Yes.

Q. Now I will ask you if at any time prior to October 3, 1953, the Defendants ever gave you any notice, either verbal or written, that they desired to terminate the agreement pursuant to Paragraph 8? A. No.

Q. Did the Defendants otherwise give you any notice between April 3, 1953, and October 3, 1953, or at any previous date that they desired termination of the agreement on October 3, 1953?

A. No. [51]

Q. And when do you say that the basic agreement, which is Plaintiff's Exhibit 1, expires by its terms, except as it may otherwise be modified?

A. October 3, 1958.

Q. Now referring to the attachment to the basic agreement which bears date of February 21, 1950, and is entitled "Modification of Agreement," I will ask you if that modification was still in force at the time service was refused by the Defendants on or about February 14, 1953? A. It was.

Q. Had the Defendants given you any notice

(Deposition of Carl B. Molander.)

whatsoever that they desired termination of the suspension as provided for in said modification

February 21, 1950? A. No.

Q. If either you or the Defendants had give such a notice what if any would have been the result so far as the weekly rate was concerned?

A. The then existing rate of \$52.52 per week would have been restored to \$72.52 per week.

Q. For what period of time was this suspension provided for in the modification dated February 21, 1950, in effect?

A. It was in effect from February 19, 1950, until service was discontinued on February 14, 1954.

Q. And what do you say was the effect of said modification on the term of the basic [52] agreement?

A. The basic agreement and the terms thereof was extended by a period which was just a few days less than four years.

Q. In other words, the basic agreement was thereby extended from October 3, 1958, to September 27, 1962, because the Defendants gave no notice that they desired the suspension lifted?

A. Yes, sir, that was under Clause 3 of the Modification.

Q. Now, when was the first notice received by U.P.A. that the Defendants desired cancellation of the agreement?

A. That is not too clear in my mind, but I would say that they gave some indication of their desire

(Deposition of Carl B. Molander.)

to cancel to Mr. Belnap about mid-January, 1954. I know I received a letter from Sid Charles, dated January 22, 1954, in which he asked for a rate reduction, and then later in the middle of February, 1954, I received a copy of a wire that Paul Charles sent to Mr. Belnap, in which he requested that service be discontinued at once.

Q. Well, did you ever receive any other notification—and I am recalling to your mind a certain letter dated January 7, 1954?

A. Yes, I received a letter from Mrs. Flood, of the Daily News, dated January 7, 1954, in which she remarked that she had not received a reply to her letter of November 14, 1953, and enclosed a copy of that purported letter.

Q. Had you ever received the letter of November 14, 1953, to [53] which Mrs. Flood had referred in her letter of January 7, 1954? A. No, sir.

Q. Did you make a diligent search of the New York files, as well as have a search made of your West Coast files for such a letter?

A. We have.

Q. And did you ever locate such a letter?

A. No, sir.

Q. Well, then, the letter of November 14, 1953, was first called to your attention by reason of the fact that Mrs. Flood had enclosed a copy thereof with her January 7, 1954, letter?

A. That is right.

Q. And you have never seen the original of this

(Deposition of Carl B. Molander.)

letter dated November 14, 1953, purporting to signed by Mrs. Flood? A. No, sir.

Q. If there was such an original letter would have in the ordinary course of events been brought to your attention?

A. I am certain that it would have, yes.

Q. On what date did the Defendants actually notify you to discontinue your News Report to them? A. On February 15, 1954.

Q. And did you discontinue service at that time?

A. Yes, sir. [54]

Q. Did the Alaska Communication System notify you on or about February 18, 1954, that since the Defendants would not accept your News Report after February 14, 1954, that it could not continue to send the reports unless you guaranteed the toll charges? A. Yes, sir.

Q. And were you willing or unwilling to guarantee payment of these toll charges that were payable by the publisher? A. We were unwilling.

Q. What was the basic weekly rate for service to the Defendants as provided in Plaintiff's Exhibit 1? A. \$38.17.

Q. Was that basic weekly rate of \$38.17 increased at any time?

A. Yes, sir, several times.

Q. Well, what was the amount of the first week's increase, and when did it become effective?

A. \$1.15, and it became effective on January 1, 1946.

Q. Will you state the Paragraph number of t

(Deposition of Carl B. Molander.)

contract under which said increase was made or permitted? A. Paragraph Second, Subsection 2.

Q. Was there a further increase in the weekly rate, and if so give me the date, amount and circumstance?

A. Yes, on April 3, 1946, the rate was increased by \$52.50, because of putting on an operator at Seattle, which cost [55] the Alaska Fishing News agreed to bear.

Q. Well was this charge for the Seattle operator thereafter reduced by you, and if so give the date and amount of such reduction?

A. On October 28, 1946, after arrangements with the Charles, we agreed to absorb part of this Seattle operator's salary, and the weekly rate to the publisher was reduced by \$27.50.

Q. A week? A. Per week.

Q. And after such reduction what was the then going weekly rate?

A. The rate was cut to \$64.32, the Charles agreeing to pay \$25 a week toward the Seattle operator's salary.

Q. Were there any further increases in weekly rates, and if so I should like to have them in chronological order? A. Yes, there were.

Q. Well, then, what was the effective date and amount of the next increase, and what was it for?

A. On December 29, 1946, the rate was increased by \$3.05 a week for increased operator's wages.

Q. Why was such increase made necessary?

(Deposition of Carl B. Molander.)

A. After negotiations with the Telegrapher Union we had to make concessions, and this was their proportionate share of the increase in cost us. [56]

Q. Will you state the Paragraph number of the contract under which said increase was made permitted?

A. Paragraph Second, Subsection 2.

Q. In other words, after you had figured your additional costs due to this wage increase which was forced upon you by the leased wire operator union, you arrived at a percentage by which the additional costs bore to your total receipts from your contract clients?

A. Yes, that is right.

Q. And the same percentage was applied to the weekly rate which each of your contract clients pay to you for your service?

A. Yes, sir.

Q. And by so applying that percentage to the Ketchikan Daily News you arrived at a weekly increase for them of \$3.05?

A. Yes, sir.

Q. Now what was the date and amount of the next increase, and what did it cover?

A. On January 4, 1948, the rate was increased \$3.09 per week. This was likewise for operator wage increase.

Q. And was this increase made for the same reason as the previous increase, as to which you have just testified?

A. Yes, sir.

Q. And was this calculated and applied to your contract clients in the same manner as the previous weekly increase [57] in weekly rate?

(Deposition of Carl B. Molander.)

A. Yes.

Q. And what was the date and amount of the next increase, and what was it for?

A. On January 9, 1949, the rate went up \$2.06 a week because of increased operator's wages.

Q. And was this increase calculated and applied to the weekly rates of all your contract clients in the same manner as the previous increases that you have just testified to? A. Yes, sir.

Q. Well, after this particular increase became effective what was the then going weekly rate to the Defendants? A. \$72.52.

Q. And did this weekly rate remain in effect until you entered into the modification of agreement dated February 21, 1950? A. Yes.

Q. What was the effect of this modification of agreement upon the weekly rate?

A. We reduced the weekly rate from \$72.52 to \$52.52.

Q. In other words, beginning as of February 19, 1950, the weekly rate to the Defendants was reduced to \$52.52? A. Yes.

Q. What was the date and amount of the next increase, and [58] what was that for?

A. On January 7, 1951, the rate was increased by \$4.75 a week, which made the total rate \$57.27 a week. This was an extraordinary cost assessment.

Q. Now, what does this extraordinary cost assessment involve?

A. It was put on because of the increased salaries to our Union members the previous year, and

(Deposition of Carl B. Molander.)

also because of the unusual increase and expense covering the Korean War.

Q. And under what provision or provisions the contract did you make such additional cost assessment?

A. Paragraph Second, Subsections 2 and 4.

Q. And was this extraordinary cost assessment calculated and applied to all your clients in the same manner as the several operator's increases which you have previously testified?

A. Yes, sir.

Q. Was there any other increase, and if so, what was the date and amount thereof and what did it cover?

A. The last increase was made on May 3, 1953, the amount of \$4.18 per week for labor wage increases.

Q. And was this particular increase in the weekly rate calculated and applied to your contract clients in the same manner as the other increases referred to? A. Yes, sir.

Q. Did the Defendants pay for all these increases as they [59] were levied and assessed from time to time until service was terminated by them as of February 14, 1954? A. They did.

Q. Now, just to briefly review, the weekly starting rate under your basic agreement was \$38.17?

A. Yes.

Q. And there was an operator's increase of \$1.15 per week, effective January 6, 1946, which increased the rate to \$39.32? A. That is right.

(Deposition of Carl B. Molander.)

Q. Then on April 3, 1946, pursuant to mutual arrangements, a Seattle operator was engaged on the basis of a weekly salary of \$52.50 which the Defendants assumed to pay? A. That is right.

Q. And that increased the weekly rate to \$91.82?

A. Yes, sir.

Q. And then on October 28, 1946, you agreed to absorb \$27.50 of the Seattle operator's weekly salary, and the Defendants agreed to pay the balance of the Seattle operator's weekly salary amounting to \$25? A. Yes, sir.

Q. And this reduction decreased the rate to \$64.32 a week? A. Right.

Q. And thereafter there were weekly increases because of increase in Union wage scale of operators generally of [60] \$3.05, \$3.09, and \$2.06?

A. Yes, sir.

Q. And with these three weekly increases, the then going weekly rate was \$72.52?

A. Yes, sir.

Q. Now, at that time—and that would bring us up to February 19, 1950—do I understand you to say that the weekly rate that the Defendants were paying was \$72.52? A. Yes, sir.

Q. And it was then that you entered into the modification of agreement dated February 21, 1950?

A. Yes, sir.

Q. And what was the effect of that modification of agreement upon the weekly rate?

A. It reduced the weekly rate by \$20, or to \$52.52 per week.

(Deposition of Carl B. Molander.)

Q. And subsequent to this time there was a further assessment for extraordinary costs of operation on January 7, 1951, amounting to \$4.75 per week?

A. Yes, sir.

Q. And there was a further labor increase on May 3, 1953, of \$4.18? A. Yes, sir.

Q. Now, what was the total aggregate weekly rate for services as of this time?

A. \$61.45. [61]

Q. And did that aggregate weekly rate of \$61.45 exist right down to the date of termination of service? A. Yes, sir.

Q. And that was the rate Defendants were paying on or about February 14, 1954? A. Yes.

Q. Now, when you came to calculate the aggregate weekly rate for the purpose of computing your damages, what did you do, and what elements did you take into consideration?

A. We took into consideration the basic rate, mentioned in the contract, plus all of the increases put on due to operator's increases in wages and extraordinary cost involved.

Q. In other words, in computing the aggregate weekly rate, instead of restoring the \$20 decrease which was granted February 19, 1950, and adding that to your current billings of \$61.45, which would have made a weekly rate of \$81.45, you eliminated the \$25 weekly charge which the station had been presumably paying for the Seattle operator, and which otherwise would be considered a part of your costs, and you came up with a weekly rate of \$56.45?

(Deposition of Carl B. Molander.)

or \$5 less than they were being billed for at the time the service was terminated?

A. That is correct.

Q. There was no point in considering the \$25 additional [62] charge, since that represented costs, and furthermore in reducing the rate by \$20 that merely reduced that particular cost item to \$5?

A. Yes.

Q. And in arriving at your damages, your weekly rate was computed on the basis of \$56.45 per week, rather than \$61.45 per week?

A. Yes, sir.

Q. And according to your figures, how many weeks did the contract have to run after the Defendants discontinued service?

A. Four hundred and forty-nine and four-sixths weeks.

Q. Will you state what would have been the total gross receipts which U.P.A. would have received from the Ketchikan Daily News under your agreement of June 30, 1945, for the period from February 14, 1954, through September 27, 1962, if they had continued to perform under the agreement for the balance of the term thereof?

A. \$25,383.68.

Q. Now, will you state the total gross cost that you would have incurred during those 449 and 4/6 weeks, which was incidental to your having to furnish your News Report to the Defendants, and what that cost would run per week?

(Deposition of Carl B. Molander.)

A. The gross cost would be \$3,894.11, or \$8.66 week.

Q. Will you explain in detail how this cost figure was [63] arrived at, identifying the various expenses which U.P.A. would have incurred during each week solely by reason of having to furnish its News Report to the Defendants during the aforesaid period of time?

A. Since the publisher paid the total on the transmission of the service, the only costs incurred by the United Press were the furnishing of a tele-type machine. On the basis of normal accounting procedure, which is in line with the American Telephone and Telegraph Company's rental charges the machine costs amounted to \$8.54 a week, and the additional cost of 12 cents to cover the usage of the paper.

Q. And those are the only expense items that have been eliminated because the Ketchikan Daily News was dropped from the Alaska circuit?

A. Yes, sir, that is right.

Q. And what is the difference between the aggregate amounts you would have received from the Defendants and your costs incidental to furnishing your News Report to them for the unexpired portion of your service agreement?

A. \$21,489.57.

Q. And is that the amount of your damages, or what you would have considered you will have lost?

A. Yes, sir, it is.

Q. State whether or not the News Report which

(Deposition of Carl B. Molander.)

you furnished [64] to the Ketchikan Daily News under your agreement of June 30, 1945, was furnished as a part of the regular and customary business activities of U.P.A.?

A. It was.

Q. And will you state whether or not U.P.A. was ready, able and willing on February 14, 1954, and thereafter, to continue furnishing its service to the Defendants pursuant to your contract?

A. We were and still are.

Q. Why did you discontinue furnishing that service to the Ketchikan Daily News?

A. They ordered us out. They said they were shipping the teletype machine and also said they could get a better rate elsewhere.

Q. After the Defendants ordered you out and told you that they were shipping the teletype machine, did you accept this as a repudiation of the contract and consider that you were relieved from further performance thereunder?

A. We did, yes, sir.

Q. Based upon the damage figures which you have heretofore given, will you state whether or not this is the net profit which you would have made in furnishing your News Service to the Defendants for the balance of the term of the agreement and the amount of that net profit?

A. Yes, it would have been net to us and it would total [65] \$21,489.57. I should say this is the money which we should have got, but won't if the Charles' have their way about it.

Q. In other words, the difference between \$56.45

(Deposition of Carl B. Molander.)

per week, the amount you would have received, and \$8.66 per week, the cost of maintaining your service to the Defendants, represents the net gain per week which you would have realized under your agreement if you had been able to continue the service.

A. That would be the minimum, yes.

Q. Is it part of your duties as Assistant General Sales Manager to have knowledge of the costs and expenses which U.P.A. incurs in furnishing its News Service to various newspapers and radio clients and in particular to the Ketchikan Daily News? A. It is.

Q. Are you personally familiar with all the costs and expenses which U.P.A. incurred each week in furnishing your News Service to the Ketchikan Daily News? A. I am.

Q. Will you state whether the information which you have heretofore given with reference to the costs and expenses is based upon facts and figures which are contained in the business records of U.P.A., which you have examined? [66]

A. They are.

(Reading suspended.)

Mr. Faulkner: May it please the Court, I object to that question as not the best evidence. I think you are entitled to have some books of account or some computation of costs instead of this man's statement that he examined the books. It isn't the best evidence, so I object to that question.

(Deposition of Carl B. Molander.)

Mr. Dimond: I doubt whether the best evidence rule applies here, your Honor.

The Court: Will you read that question again?

Mr. Dimond: "Will you state whether the information which you have heretofore given with reference to those costs and expenses is based upon facts and figures which are contained in the business records of U.P.A. which you have examined?"

The Court: Well, it seems to me the best evidence rule would apply. It calls for the contents of business records. But the question that occurs to me is whether this objection is available now. If I recall the rule governing objection to depositions, if the objection is one that could have been made at the time of taking the deposition and could have obviated the difficulty, it should have been made then; otherwise, it can't be made at the time of trial.

Mr. Faulkner: Well, of course it couldn't in this case, your Honor, because this was taken in New York and we [67] weren't there and we had no way of being there and making objection to it or cross-examining him on it.

Mr. Dimond: You had the opportunity.

Mr. Faulkner: I think they are obliged to furnish the best evidence here in order to admit this.

The Court: Well, of course, if there is no objection made at the time the evidence goes in, the rule can't be invoked later. I think that the objection could very well be made if it weren't for that situation, that it could have been made and wasn't. Now,

(Deposition of Carl B. Molander.)

I suppose that the plaintiff does not have his records here?

Mr. Dimond: I don't know.

The Court: The records to which reference was made there in that question.

Mr. Dimond: You don't have all these records?

Mr. Belnap: No, I don't have.

The Court: Well, I think the objection will have to be overruled on the ground that it is an objection that should have been made at the time of taking the deposition and would have obviated this defect.

(Reading resumed by plaintiff.)

Q. Are the facts and figures and the entries made in connection therewith done in the regular course—

(Reading suspended.)

Mr. Belnap: I don't think I gave the answer that [68] previous one, before the objection was made.

Mr. Dimond: Well, what is the answer to that previous one?

(Reading resumed by plaintiff.)

A. They are.

Q. Are the facts and figures and the entries made in connection therewith done in the regular course of the day-to-day business of U.P.A.?

A. They are.

Q. Will you state whether or not it has been t

(Deposition of Carl B. Molander.)

practice for U.P.A. for many years to maintain in the regular course of its business detailed records setting forth the costs and expenses incurred in connection with serving its clients? A. Yes.

Q. State whether or not it has been the practice of U.P.A. for many years to have notations made in its records so that they will fully and completely reflect the costs and expenses incurred by it in furnishing its service to any particular radio station or newspaper client? A. Yes.

Q. State whether or not the various books and records of U.P.A. from which you have received the information to which you have testified have been kept pursuant to the aforesaid practices? [69]

A. They are.

Q. And would you state whether or not you are familiar with the books and records to which you have just testified and to the manner in which such books and records have been kept? A. I am.

Q. State whether or not those books and records are a part of the official and regular books and records maintained by U.P.A. relating to its costs, expenses, charges and payments? A. They are.

Q. State whether or not the persons who made the entries in such books and records were making such records pursuant to their regular day-to-day business duties? A. That is right.

Q. State whether or not it was part of the regular day-to-day business duties of U.P.A.'s employees to keep those books and records and to keep them systematically and accurately to the best of their

(Deposition of Carl B. Molander.)

ability? A. That is right.

Q. And from all the foregoing would you say that you were personally familiar with the book-keeping practices which you have heretofore testified to and particularly with respect to those practices as they relate to the Ketchikan Daily [70] News? A. Yes, I am.

(Reading concluded.)

Mr. Dimond: And that is the end of the deposition. Attached to the deposition is the original contract signed by the parties to this action with, Mr. Molander has testified to twelve documents comprising modifications and actually a part of the contract. I would like to offer in evidence the printed contract with the documents attached. Some of them may be duplications.

The Court: Well, what are the documents that are attached to it—the modifications?

Mr. Dimond: They are documents that reflect the agreements between the parties, the correspondence showing the change in rate and reductions and modifications.

The Court: Is it complete in that respect?

Mr. Dimond: Yes, it is. (Handing proposed exhibit to Mr. Faulkner.)

The Court: Well, the contract with supporting papers may be admitted in evidence.

The Clerk: That will be Exhibit 2. [71]

* * *

Defendants' Case

PAUL S. CHARLES

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Faulkner:

Q. Mr. Charles, please state your name.

A. Paul S. Charles.

Q. And where do you live?

A. Ketchikan, Alaska.

Q. How long have you lived here?

A. Oh, since 1926.

Q. And what have you been doing?

A. Working at the newspaper business.

Q. For how long? A. Since 1927.

Q. Since 1927? A. Yes.

Q. What was the newspaper?

A. The Chronicle.

Q. How long did you work there?

A. Seventeen years, I believe.

Q. And then you went with another paper?

A. Then I went over to the Alaska Fishing News.

Q. And who owned the Alaska Fishing News?

A. Sidney Charles, my father. [115]

Q. And how long were you there? Do you remember what year you went there?

A. Frankly, no; but it was, I think, about 1940. or '39—'40, around there.

(Testimony of Paul S. Charles.)

Q. And you have been there continuously since

A. Yes.

Q. Now, how often was the paper published?
What paper did you publish then?

A. The Alaska Fishing News, and at that time it was a tri-weekly. That was three times a week was published.

Q. Now, where did you get your news service for the Alaska Fishing News?

A. We got it from the United Press through what they call a pony service, and a pony service is one that they send through the telegram office in—well, it comes in a reduced form. I mean, you have to fill it in, and it comes by telegram; is that what it was.

Q. Now, did you have the United Press Service several years prior to September, 1945?

A. I believe we had it three years.

Q. And was it satisfactory?

A. Yes; at that time I considered it satisfactory.

Q. And you are familiar with the type of news they were sending you at that time?

A. Yes. [116]

Q. And when you—then you are familiar with the contract which is the subject of this lawsuit which went into effect in September, I believe, 1945 somewhere around there? A. Yes, I am.

Q. Now, that contract refers to a news report. What did you understand was to be the nature of the news report with reference to the reports you had previously received from the United Press?

(Testimony of Paul S. Charles.)

A. Well, I felt the nature of that report, from what we had received three times a week, that naturally it would be a much fuller report, much more detail, and so forth, and, first that it would be regional news or Alaska, which we always specified, that we would probably get, concentrate on Alaska; next would be your Pacific Northwest; and third would be Washington News; and then your fourth would be world news.

Q. Now, your understanding was that you would get that type of service under this contract?

A. We felt definitely that they would concentrate on Alaska, Pacific Northwest and Washington.

Q. And was your understanding based on your previous experience with them?

A. I would say it was.

Q. Now, you began to take this service in 1945; did you [117] continue the tri-weekly paper then or did you go to a daily?

A. We went to a daily shortly after we signed up, I believe, for the teletype man, and shortly after that, I don't remember just how many months, we went into a daily newspaper.

Q. I think one of the depositions here mentioned that the contract was dated September 1, 1945, and that you actually began the service on October 3, 1945.

A. That would be about right.

Q. That would be about the time you went to the daily?

A. Yes.

Q. Then you took the service then by teletype when you inaugurated the daily?

A. Yes, sir.

(Testimony of Paul S. Charles.)

Q. Now, who owned the Alaska Fishing News at the time that this contract was entered into?

A. In 1945?

Q. Yes.

A. Well, Sid actually owned the Daily News until such time as we made it into a stock corporation; he was the sole owner, I would say.

Q. He was the sole owner?

A. That is right.

Q. That is your father? [118] A. Yes.

Q. He is quite an old man, isn't he?

A. Well, he is eighty-one.

Q. And what is his condition of health?

A. Well, it isn't—he can't climb any stairs at the present time, and he has had two or three heart attacks, and that is one reason he is not up here today.

Q. Now, then you say you formed a corporation. Do you remember when that was?

A. The date? I don't know the exact date.

Q. Let me ask you this. Did you continue taking the news from the United Press as the Alaska Fishing News until you formed the corporation?

A. We did.

Q. Now, what was the name of the corporation that succeeded to the Alaska Fishing News?

A. The Pioneer Printing Company.

Q. Now, I will hand you executed articles of incorporation dated April 2, 1948, and ask what that is; is that the articles?

A. That is the articles of incorporation; yes, sir.

(Testimony of Paul S. Charles.)

Q. That is the executed articles?

A. Yes, sir.

Mr. Faulkner: We would offer that. (Handing proposed exhibit to Mr. Dimond.) [119]

The Court: It may be admitted.

Mr. Faulkner: Defendants' Exhibit C—no—B.

The Clerk: B.

Mr. Faulkner: I don't know whether this should go to the jury now.

The Court: You can suit yourself.

Mr. Faulkner: I will pass it around. I don't want to read it.

The Court: I think, if you want them to read it, we will have to suspend.

Mr. Faulkner: No, I wouldn't want them to read it. Perhaps it would be better to file it.

The Court: Well, you can read it in argument.

Mr. Faulkner: I don't think the jury has much to do with it anyhow. This is on the question of the first or third affirmative defense—I have forgotten which.

Q. (By Mr. Faulkner): Now, Mr. Charles, at the time that you formed the corporation, the Pioneer Printing Company, one of the defendants here, did you transfer to that company the property formerly belonging to your father and operated as the Alaska Fishing News? A. Yes, sir.

Q. I will hand you a bill of sale and ask you if that was the transfer that was made at the time?

A. Yes, sir. [120]

(Testimony of Paul S. Charles.)

Mr. Faulkner: We will offer that. (Handing proposed exhibit to Mr. Dimond.)

Mr. Dimond: I have no objection.

Mr. Faulkner: Defendants' Exhibit C.

The Clerk: C—that is right.

Q. (By Mr. Faulkner): Now, Mr. Charles, that bill of sale is signed by yourself and your father and your wife? A. That is right.

Q. Did you own an interest in the partnership at the time you signed the bill of sale, or why was it that your signatures were on there?

A. Well, actually, there would be no indication that I ever owned anything in the Alaska Fishing News, although I had put money into it, and it was considered, I mean, that I did own a part, or supposedly, but actually it never showed that I owned any of the Alaska Fishing News.

Q. Now, when you formed the corporation, are you familiar with the way that the stock was issued generally familiar with it?

A. Well, generally, yes. I think that Perry Hilteary held \$10,000.00 worth; Robert DeArmond held \$3,500.00 worth; I only held one share in the corporation, I believe, and other stock had never been issued to me; and I think Sid has one share in the corporation.

Q. And what was the par value of the [121] shares A. \$100.00, I believe.

Q. I will hand you Minutes of First Meeting of Stockholders, or what purports to be, and ask you if that is correct? A. Yes, sir.

(Testimony of Paul S. Charles.)

Mr. Faulkner: We will offer that. (Handing proposed exhibit to Mr. Dimond.)

Mr. Dimond: No objection.

Mr. Faulkner: Defendants' Exhibit D.

The Clerk: Exhibit D.

Q. (By Mr. Faulkner): Now, you say that the only certificates of stock issued to date in the corporation were to Robert DeArmond, Perry Hilleary, and who else?

A. Pat Charles, my wife, and I, and Sid; and Marie Flood now has stock.

Q. Now, has any stock actually been issued to you or your wife or your father?

A. I believe just one share.

Q. One share so far. Now, I will ask you if these are the, what I am handing you, are the stock certificate stubs of the stock that has been issued?

A. DeArmond, Hilleary, and Mrs. Flood.

Q. Now, these stock certificates begin at No. 5. What about Nos. 1, 2, 3, and 4; have they ever been issued? A. No.

Q. That would be your father's, yours and your wife's? [122] A. That is right.

Mr. Faulkner: We will offer these. (Handing proposed exhibit to Mr. Dimond.) This will be Defendants' Exhibit E.

The Clerk: E.

Q. (By Mr. Faulkner): Now, Mr. Charles, I will ask you this question. This contract that United Press sues upon has a provision in it that the Alaska Fishing News will guarantee that the contract will

(Testimony of Paul S. Charles.)

be carried out by the successor. I will read you this
“In the event of sale, transfer”—I am reading from
the contract, Paragraph 8—“In the event of the
sale, transfer or consolidation of the aforesaid news-
paper property of the Publisher, the Publisher
hereby guarantees that his successor or assignee will
fulfill the terms and conditions herein contained for
the full life of this agreement.”

Now, was there any document ever signed or
anything ever done to bring that to the knowledge
of the corporation, except what you and your father
knew about it? A. I don't believe there was

Q. Now, was that ever brought to the knowledge
of the chief stockholders, Perry Hilleary and Rob-
ert DeArmond? A. No.

Q. Did they have anything to do with it?

A. No; no, I don't think they had anything to
do with the press service whatsoever. [123]

Q. Was there ever anything done about their
assuming this contract? A. No.

Q. Except that you and your father continued
on there to manage the paper, of course?

A. That is correct.

Q. And you continued the news service with the
United Press; that is right, is it?

A. That is correct.

Q. As far as the other stockholders are con-
cerned and the official records of the company
there is no indication that there was ever any as-
sumption of this contract by the corporation?

A. No, sir.

(Testimony of Paul S. Charles.)

Q. Now, let's go back to the contract, to the service furnished under it. Did you have some trouble with United Press over this contract, over the service they were furnishing you?

A. Yes; we have had trouble over the service, and we have made numerous complaints to them, and constantly we sent telegrams to them, and over stories that we were scooped on day in and day out and that came out of Washington, D. C., and out of the Pacific Northwest, and constantly we had one complaint after the other, and my father used to go down and file a telegram every second or third night [124] to the Seattle office of Harry Carlson asking for them to get on the ball and quit getting scooped, and he would name the stories and so forth, and it was such as the pulp mill we were scooped on here, and we had informed them at times to keep a check on that and on the Indian Affairs and different things, and then constantly they would make alibis. Well, the newspaper can't exist on alibis by a press service, and this thing has been going on, and Governor Gruening made a complaint about the way they handled a story about him and the Governors' Conference. They mentioned everything in the Governors' Conference, and we had a copy sent to us of the letter, and they mentioned everything in the Governors' Conference, including statehood for Hawaii, which was a unanimous resolution by the governors for statehood for Hawaii and Alaska,

(Testimony of Paul S. Charles.)

but Alaska was left entirely out. Well, I mean, they are furnishing an Alaska service. You would think they would include that.

Q. Well, now, just a minute.

Mr. Faulkner: I will state to the Court that I will connect all this up by exhibits. I am just asking him to state generally now what is the nature of the things.

Q. (By Mr. Faulkner) Now, you have referred here to a news item that was sent you by the United Press on a Governors' Conference? [125]

A. Yes, sir.

Q. And what was done at that Governors' Conference; do you remember?

A. Well, one thing they did was they did pass this resolution for statehood unanimously for Hawaii and Alaska, but the UP story came over with a story about the western governors and even mentioned—well, let me see if I can recollect that story—it even mentioned fertilizer at the start, but at the very bottom it said other developments and then it mentioned statehood for Hawaii, but nothing for Alaska.

Q. Now, did the Associated Press carry the full news on that? A. Yes, it did.

Q. Did the Governor of Alaska complain about that? A. Yes, he did.

Q. And you have a copy in your files of the letter he sent the United Press? A. Yes.

Mr. Faulkner: I believe the United Press, your Honor—I made a request for admission of the

(Testimony of Paul S. Charles.)

original letter, and they said that they couldn't find it. Now, I will offer now a copy of that letter which we have here.

Mr. Dimond: What is the date of that letter?

Mr. Faulkner: It is April 29, 1948. It is in your demand there. [126]

Mr. Dimond: If the Court please, I would like to interrupt just a moment and object to the introduction in evidence, either by way of exhibit or testimony of Mr. Charles, of any instances of purported poor service that occurred prior at least to the modification of the agreement entered into on February 21, 1950, or even the automatic renewal date of the contract which went into effect on October 3, 1953, under the terms of the contract. I think that the law is that in a case of this kind that, assuming that these cases that Mr. Charles testified about were breaches by the plaintiff, which we don't think they were, that they have waived those by continuing to accept service under the contract subsequent to that time by paying the rates and so forth, and I think that that can be established, your Honor. I think that these things clutter up the record and they are not competent evidence.

The Court: That might be true if the defendants were counterclaiming as a result of such breaches, if they were breaches, or unsatisfactory service, but all that this evidence is being put in for is for its evidentiary value. In other words, if the defendants were basing a counterclaim on it, then the question of waiver would arise, but, since this

(Testimony of Paul S. Charles.)

is merely introduced or offered for its evidentiary value, this objection that you make is not available to you, and, particularly since the relationship of the parties leading up to the breach is relevant and material, why, the objection [127] will have to be overruled.

Mr. Faulkner: Your Honor, I might state—this might have application to something else—but this is a very drastic contract drawn by the plaintiff, a printed form, and it extends for a long period of years, and we couldn't very well come in and terminate it because of one breach, but I want to show that these were these breaches of service which continued over a period of years and we kept on going until we just had to terminate the contract, so that is the evidence that I expect to put in, and this is just a part of it.

Q. (By Mr. Faulkner): I will ask you, Mr. Charles, if that is a copy of the complaint that Governor Gruening sent to the United Press Service? A. Yes.

Mr. Faulkner: You have this?

Mr. Dimond: Yes.

Mr. Faulkner: We will offer this in evidence.

The Court: If there is no objection, it may be admitted.

(Marked Defendants' Exhibit No. F.)

Mr. Faulkner: I would like to read this very briefly to the jury at this time. This is dated:

(Testimony of Paul S. Charles.)

“Room 6412, Interior Building, Washington, D. C., April 29, 1948. Mr. Hugh Baillie, President, United Press Association, New York, New York. Dear Mr. Baillie: [128]

“I would like to call your attention to the disparity between the AP and the UP stories out of Sacramento on the matter of the Statehood resolution. The matter is of some importance to me and naturally of considerable interest to Alaska. The resolution which I introduced and which was passed unanimously by the governors, copy enclosed, urged action equally at this session of Congress in behalf of Statehood for both territories. You will note that the UP story sent to Alaska for some unaccountable reason left Alaska out of the story and merely mentioned Hawaii.

“You can understand my feeling, I think, that the readers of the UP papers in Alaska were deprived of what to them would be the item of greatest interest. I would appreciate knowing what your reaction is and what the reason for the correspondent’s deletion of mention of Alaska in his dispatch to Alaska. The UP clipping is from the Ketchikan Daily News; that AP clipping is from the Honolulu Star Bulletin. Sincerely yours, Ernest Gruening, Governor.”

Q. (By Mr. Faulkner): Now, Mr. Charles—

Mr. Faulkner: I have various newspaper clippings here which I want to introduce by another witness, your Honor, but I want to ask Mr. Charles generally.

(Testimony of Paul S. Charles.)

Q. (By Mr. Faulkner): Now, you said various complaints were [129] sent to the United Press over a period of years. was it? A. Yes.

Q. And you had letters back and forth from them? A. That is correct.

Q. Where would this correspondence be—with various offices?

A. Well, it would be mostly with your Seattle bureau.

Q. Seattle bureau?

A. Seattle bureau manager; because that is where it comes from.

Q. Who was in charge there during the periods of this correspondence?

A. Well, Harry Carlson was probably there the longest, and there were various managers; there were some there that I didn't know; but I did know Harry Carlson, and he was there for a considerable period.

Q. Did you know Mr. Green?

A. Yes, I knew Mr. Green.

Q. Now, Mr. Charles, they mention various rate increases. This contract calls for \$38.17 a week for the news service plus, of course, your paying the cost of the telegraph tolls and agreed to pay the increases in the various costs that they had in Seattle; is that right? A. That is right.

Q. And those were detailed in the deposition here of Mr. Molander? [130]

A. That is correct.

Q. They increased from time to time so that you

(Testimony of Paul S. Charles.)

paid in addition to \$38.17 a week the sum mentioned by Mr. Molander? A. That is right.

Q. That too. And that was all paid in full up to the time you cancelled the contract?

A. Yes, sir.

Q. You owed them nothing?

A. That is right.

Q. Now, going back to the service, in the fall of 1953, just a short time before this contract was cancelled, did you have some special difficulty about Alaska news, especially Juneau news?

A. Yes, sir. I think the final thing that decided us to quit the United Press was at the time they hired a correspondent in Juneau, George Sundborg, who acted as a correspondent for the Ketchikan, Alaska, Chronicle. He sent them news stories of considerable importance and never sent a word, apparently, to the United Press, because we never received anything from the United Press on the things that were happening in Juneau, and they were of prime importance to the people in the Territory.

Q. Now, what the United Press did then was to hire as their agent a correspondent in Alaska, a man who was a [131] correspondent of another paper to whom he gave priority; is that right?

A. That is right.

Q. That other paper happened to be your rival?

A. That is right.

Q. And you have a good many instances of things that occurred there during that period?

(Testimony of Paul S. Charles.)

A. Yes.

Q. Which will be introduced by another witness?

A. That is right.

Q. Now, that occurred in the late months of 1953, after the middle of the summer?

A. It occurred; yes, sir. We had to give up making any further protest to the UP because they paid no attention to us whatsoever; neither did they improve their service.

Q. Now, in November, 1953, did you send a letter to them stating that on account of these various things you were cancelling the contract?

A. I believe Mrs. Flood would be able to answer that. I told her previously to that that I felt that she should, when the time came for the notification, to notify them that we wanted to cancel our contract.

Q. And what did you do then—I mean, in the way of getting news service?

A. I had contacted the AP and talked with Mr. Hutchison and [132] with their other representative, the bureau manager—I don't recall his name now—and arranged for service from the AP, and then I did make a trip to San Francisco—

Q. First, why did you make that arrangement with the AP?

A. Because we weren't getting the news coverage through UP. It was a poor service.

Q. And then you continued with the UP and had to have them both?

(Testimony of Paul S. Charles.)

A. That is right; although, previously, I will say this—two and a half years ago, to overcome the handicap of UP, I put in a Scanagraver, which runs us normally about \$600.00 a month, to pay the lease on this, the operator's cost and the plastics involved and keep a photographer on that.

Q. That was done to—

A. That was to offset the poor coverage so we could stay in business. That is what it meant.

Q. That cost you about \$600.00 a month?

A. That is right.

Q. Then you said you went to San Francisco, so will you tell the jury about that trip to San Francisco?

A. Yes, sir. I went down to see Mr. Green about the contract.

Q. Who is Mr. Green? Well, I think he told you.

A. He was in the San Francisco office. And we talked about [133] this contract. I told him that, frankly, that I didn't believe his news service was good. I mean, we talked about the news service. We also talked about the price, and, while in his deposition he says that it was \$125.00, that I stated a figure, well, I think Mr. Green is mistaken on that, because at the time I didn't state any figure.

Q. You mean—now, just a minute—wasn't it \$135.00?

A. No; I think it was \$125.00 that he said. But what I did tell him was that, due to the fact that we had this contract with him, that I would go ahead and take the UP on the same basis that I

(Testimony of Paul S. Charles.)

would take the AP and pay him just the same and sign the same kind of a contract for the same number of years, and that is what I said. I mean, basically, if he wanted to go, I mean, he would have to—in other words, what I said was that the news service wasn't such, that we just weren't getting the news through the UP; we had to take AP.

Q. You told him that you would get the same news service through UP?

A. That is right; I would take it, and he would have to compete on the same basis that AP would and according to the figures.

Q. Well, now, did you tell him at that time about their agent in Juneau? [134]

A. Yes, sir. I told him about Mr. Sundborg and I told him that politically Sundborg was very opposed to us.

Q. That wouldn't have anything to do with it. But you told him that he wasn't giving the UP news?

A. That is right. I showed him instances of it. I took newspapers down there.

(Whereupon, Court recessed for five minutes, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; whereupon the witness Paul S. Charles resumed the witness stand, and the Direct Examination by Mr. Faulkner was continued as follows.)

Q. Mr. Charles, when you went down to see Mr.

(Testimony of Paul S. Charles.)

Green in San Francisco in January or February, 1954, did you at that time have any signed contract with the Associated Press? A. No, sir.

Q. You were taking the service and you hadn't at that time signed any contract with them?

A. No, we hadn't.

Q. Now, what did you tell Mr. Green about his service?

A. I told Mr. Green that, if he wanted us to continue, he would have to give us as good service as the Associated Press and compete with the Associated Press on that basis and give us a good service.

Q. And it was Mr. Green, was it, who mentioned the \$135.00 a month: he said that you [135] wanted——

A. The figure—I can't see where the figure of one hundred and twenty-five or one hundred and thirty-five entered into it, because at that time, as far as I know, we talked figures, and it is true that he said that he would—the rest of his deposition, I remember him saying that he would reduce the rate in so many years and so many years, and my feeling was that we couldn't be tied to a service unless they could give us a service over that period of years, and it wasn't a question of costs. Of course, he said, too, there one thing that I think he misunderstood. He mentioned a statement there that we had lost money. Well, I told him the last couple of years, since we had put in the Scanagraver and gained circulation, we hadn't been losing money.

Mr. Faulkner: I think that is all.

(Testimony of Paul S. Charles.)

Cross-Examination

By Mr. Dimond:

Q. With relation to this corporation, Mr. Charles, did you say that there was no written contract between you, your father and your wife and the corporation as to the assumption of the duties under the contract? You never had a written agreement that the corporation would take over the performance of the newspaper under the contract?

A. No, sir; not that I know of. [136]

Q. Did you check all the minutes of the corporation meetings to see if anything was ever said on that point?

A. No, I have not.

Q. You haven't checked all those?

A. No.

Q. Do you know whether the corporation directors have had regular meetings?

A. Well, we have had meetings. I wouldn't say regular meetings though.

Q. Are you an officer of the corporation?

A. Yes, sir. I am the chairman or president.

Q. But the corporation, the Pioneer Printing Company, has, since it succeeded to the Alaska Fishing News in '48, I think, or '49, it continued to receive the United Press news report?

A. That is correct.

Q. And published it in its paper, the Ketchikan News?

A. That is right.

Q. And then paid for that service?

A. That is right.

(Testimony of Paul S. Charles.)

Q. I think you stated that your father, Sid Charles, was the sole owner of the Alaska Fishing News. Now, in the complaint in this action we alleged that it was owned by a partnership consisting of Sid Charles and you and your wife, and the answer to the complaint admitted those [137] allegations, admitting it was a partnership.

A. Well, it may have been considered a partnership, but I don't remember of any papers being drawn up whereby that my wife and I had actually legally any interest in the Alaska Fishing News. Naturally, I went over there; I put in money in the Alaska Fishing News; and we started—I bought machinery and things to print the Alaska Sportsman Magazine at that time.

Q. You cited many cases where you were scooped by your opposition and you assert that it was because of poor coverage by United Press. Now, do you know exactly when those dates occurred—on the dates those occurred?

A. No; on dates I wouldn't know generally. I mean, it is something over a period of time, and I believe that our news editor, who will appear, will give you a better picture of that. Mr. Brice, who is the city editor, he handles the news.

Q. Were you aware that there was a clause in this printed contract that provided for termination of giving notice at a certain time?

A. Yes, sir.

Q. You said that in your talk with Mr. Green, I think in February or January, 1954, that you had

(Testimony of Paul S. Charles.)

not signed with Associated Press, and he said in his deposition that you told him you had signed a contract with them. Which is [138] correct—had you or had you not signed a contract?

A. I had not signed a contract at that time. I told him we were going to sign a contract unless we got better service.

Q. You said you worked on the Chronicle for a while? A. Yes, sir.

Q. What years were they?

A. That was from 1927 up till about—1926, when I was going to high school, I worked there at nights on the Chronicle and then went on days in 1927 and continued on until such time as I moved over to the Alaska Fishing News.

Q. What was your capacity on the Chronicle?

A. Linotype operator.

Q. What have been your positions and capacities since you worked on the Ketchikan News?

A. Well, I am Linotype operator, pressman, general manager, floor sweeper, anything you can name.

Q. You sort of run the whole show?

A. Yes.

Q. When you received—you had a teletype machine when United Press was sending the news report? A. That is correct.

Q. Was it your job, or was it somebody else's, to edit those news reports and decide which would go in the paper and which wouldn't? [139]

A. That is up to Mr. Brice, our city editor.

Q. You didn't do that? A. No, sir.

(Testimony of Paul S. Charles.)

Q. You spoke about the United Press story relating to statehood for Alaska which Governor Gruening complained about in his letter to the United Press? A. That is right.

Q. Do you by any chance have the original transmitted copy of that story or do you have the original transmission on that date?

A. I believe we have.

Q. To find out whether that story could have been transmitted and just left out of the paper? Is that possible?

A. Well, I don't know. I couldn't state as to that.

Q. Do you preserve your transmissions that you receive, these long yellow sheets? A. Oh, no.

Q. You don't preserve them?

A. No. They go to the Linotype operator. Normally, they are edited and then they will go to the Linotype operator and from day to day they are thrown in the wastepaper basket.

Q. As I understand this, what happens is that Mr. Brice tears off the story he wants and sends it to the Linotype operator? [140]

A. That is correct.

Q. What is torn off is not saved?

A. No, sir.

Q. That is thrown away?

A. That is right. He writes the eds on them and then sends them out and when we get through with them we throw them away.

Q. There is no way to check back and see, if

(Testimony of Paul S. Charles.)

on a particular date the story appeared in your paper, whether or not it had actually been transmitted or just edited out of the newspaper?

A. That is correct.

Q. I don't understand how this, what this Scanagraver thing has to do with the United Press service, how it offsets it.

A. It offsets it from the standpoint of local pictures. The Scanagraver is something that takes local pictures. It is a circulation builder, and in order to build circulation, do something, I had to put that in.

Q. Do you still use that? A. Yes, sir.

Q. You now receive Associated Press service?

A. That is correct.

Q. Have you made any specific complaint yourself in the last, oh, say, in 1951, or 1952, 1953, about the type of [141] service?

A. Well, I think I have made various complaints. Of course, Sid makes most of them. I believe that we did make a trip. Now, what years, I couldn't say exactly. We have talked to UP representatives and talked to any of them that come through here, and my constant complaint was their news service. I mean, we just weren't getting Alaska news, and we had constant promises, one after the other, alibis, and everything, that they were going to improve their service, constantly in Alaska. They were going to send us Alaska news. I specified that we are an Alaska paper and want Alaska news.

(Testimony of Paul S. Charles.)

Q. Well, can you cite the instances where promises were made in specific cases?

A. Well, no, frankly, I can't.

Mr. Faulkner: Well, I promised the Court that the questions we asked this witness were just general and that we would follow it up by introducing these letters and also the replies, and we will do that.

Mr. Dimond: That is all, Mr. Charles.

(Witness excused.) [142]

MARIE J. FLOOD

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Faulkner:

Q. Mrs. Flood, would you please state your name? A. Marie J. Flood.

Q. And where do you live, Mrs. Flood?

A. Ketchikan.

Q. What is your business, or you work where?

A. I am business manager for the Ketchikan Daily News.

Q. How long have you been with the Daily News? A. Eight years.

Q. Do you own some stock in the Pioneer Printing Company which publishes the Daily News?

A. I do, sir.

Q. Mrs. Flood, are you familiar with some cor-

(Testimony of Marie J. Flood.)

respondence between the Daily News and the United Press regarding the service? A. Yes, I am

Q. I will hand you a letter here dated November 14, 1953. Now, this is a copy of a letter, Mrs. Flood, but are you familiar with that copy?

A. Yes; I wrote the letter.

Q. That is not an original but——

A. That is my copy of it. [143]

Q. That is taken from your files?

A. Yes, sir.

Q. On the letterhead of the Daily News?

Mr. Faulkner: Now, your Honor, this is a letter we queried the plaintiff about and they said they couldn't find it. (Handing document to Mr. Dimond.) I think Mr. Molander testified about it.

Mr. Dimond: Well, our client has never seen it before.

Mr. Faulkner: Well, I think the testimony of the plaintiff is that they received a copy of this letter of November 14th later on but did not receive the original at that date. That is the testimony.

The Court: Well, I don't think it is any objection anyhow to the offer.

Mr. Dimond: Not if she identifies it.

Q. (By Mr. Faulkner): This letter attached to defendants' motion for admission of documents under Rule 36, the letter dated November 14, 1953, there, is a copy of a letter you wrote? A. Yes.

Q. And did you mail that to the United Press?

A. I did, sir.

Q. To New York, to their headquarters?

(Testimony of Marie J. Flood.)

A. Yes. [144]

Q. And you mailed it on the date given in the letter?

A. On November 14th.

Mr. Faulkner: Now, if the Court please, while this witness is on the stand—all of these other letters in this bundle here are admitted and that one is approved, so I would like to introduce—I think that these can be introduced all together—defendants' motion for admission of documents and the reply, and the documents are attached. Now, some of these are very vital and instead of skipping over them I would like to read them to the jury.

The Court: Do you want to offer them first?

Mr. Faulkner: Yes; I want to offer them and then——

The Court: Well, as I understand it, every one of them has been admitted?

Mr. Faulkner: Yes; except that one. Isn't that right, John?

Mr. Dimond: If the Court please, I think at the time we answered this request for admissions the plaintiff couldn't find the original of the letter dated August 26, 1949, and recently, since that time, I received a carbon copy of the letter from some of the parties in this case saying they located the letter, so I won't object to it, and we will now admit that the letter is genuine and was received.

The Court: Well, the only letter then that you haven't admitted is this one of November [145] 14th?

(Testimony of Marie J. Flood.)

Mr. Dimond: That is the only one that we have not and will not admit.

The Court: I was just thinking that, since it may become necessary to instruct the jury on that, perhaps there should be some proof of the mailing and the affixing of postage and return address.

Mr. Faulkner: I asked her if she sent it, if she mailed it the same day to the address of the United Press in New York, which is on the letter, and that is as far as we can go, and then——

The Court: Well, my recollection is that the presumption that a letter of that kind has been received attaches only upon a showing that there was postage affixed and there was a return address and it was not returned.

Q. (By Mr. Faulkner): Well, is that so, Mrs. Flood?

A. Yes. It was put in a Ketchikan Daily News envelope which holds our return address. It was not returned.

Q. It was not returned. And it had postage on it?

A. Yes, sir.

Mr. Faulkner: I would like now to offer this as Defendants' Exhibit No. G.

The Clerk: G.

Mr. Faulkner: And I would like to read those letters.

The Court: Are you asking that they be marked as one exhibit? [146]

Mr. Faulkner: Yes; I think so, because——

(Testimony of Marie J. Flood.)

The Court: Very well.

Mr. Faulkner: We have the admission there of them, which I think is important. We could take them out and just put the letters in that are attached to this.

The Court: They may be admitted.

The Clerk: That group is marked Defendants' Exhibit G.

Mr. Faulkner: Now, if the Court please, I would like to read some of these to the jury. Here is a letter to Mr. Jesse Bogue, Chicago, and Mr. Roger Johnson, Portland, dated Seattle, Washington, March 2, 1948, from Harry Carlson with a copy to Mr. Charles:

“Dear Gents:

“This is another periodic but highly important request to remind your wire filers that stories from Washington slugged for AR must move before our Alaska file deadline of 11:30 a.m. (PST) and if they come from WA after that deadline, moved as rapidly as possible so that we can cable it on an extra-time basis to our Ketchikan, Alaska, client.

“Our pioneer Alaska client, the Ketchikan Daily News, has been beaten badly twice in the last week, the AP-served opposition paper having bannered WA stories of Alaska significance while the News had not a word. Editor Sid D. Charles has the patience of Job, but [147] sometimes is justified in registering a vigorous complaint.

“We relayed his first complaint to Rosemary

(Testimony of Marie J. Flood.)

Mullany in Washington and her letter in answer certainly excuses her of most of the blame in forgetting the News. Some of that blame must be assumed by us right here in Seattle for not reminding her of what's coming up so that she can watch it. And I believe another fault may lie in delay of this news on wire filer desks.

“For instance, on March 1, a story datelined WA”——

I think that is Washington.

——“quoting C. M. Granger, assistant chief of the Agriculture Department's Forest Service, telling a Senate Interior subcommittee that Congress should extinguish any Indian rights to Alaska forest preserves, came too late to AR for the Ketchikan file. The first take was cleared from Portland relay at 12:32 p.m., and the cleanup was cleared at 2:28 p.m. (both times PST).

“It could well be that both of these takes moved in record time from WA, but it is just as possible that the entire story moved from WA in plenty of time to be relayed through HX and JO for our Ketchikan file. I would appreciate it if you would check into this matter and if the latter is true, remind your wire filers to place a priority on AR-slugged stories of this nature even if [148] there is little interest in the states generally. Usually, these stories gain prominent play in Seattle newspapers because of the high interest in Alaska hereabouts. So that should lend weight to the necessity of fast movement.

(Testimony of Marie J. Flood.)

“We had queried for this store at the request of the News, and although we finally got it, he was shut out again by the opposition. As far as he knew, according to his cable, ‘again query absolutely ignored coverage Butler Senate hearing. Why opposition today bannerlined Granger’s testimony vs. Alaska Indian reservations? Should I query Washington UP direct? Am greatly puzzled why can’t I get action this important source Alaska News.’

“We have Rosemarie’s assurance that if she is queried in advance, she will come through for us. Now all we need is fast transmission of her story to Seattle so we can shoot it to Ketchikan and prevent any further shut-outs of our best customer in Alaska by the opposition.

“Thanks for anything you can do. Best regards,
Harry Carlson.

“P.S.: Here’s why I think some of these stories are dying on the relay desks: Rosemarie writes that on Feb. 18, at 1:39 p.m. (EST) a story slugged WA108 moved on a pulp bid that we had queried for in response to a [149] query from Mr. Charles in Ketchikan. It was slugged for (AR) at the bottom, she writes. But I fail to see it any place in the day’s file here. That story was spiked some place. It hurts worse when you learn that after queries moved from Ketchikan to Seattle to Washington and the job was done to have it die en route back to Ketchikan.”

That is Harry Carlson. And here is one dated January 29, 1949.

(Testimony of Marie J. Flood.)

“United Press Association, News Building, New York, New York. Attention: Carl B. Molander.

Dear Mr. Molander:

“We have received your communication of January 14, and although if we continue UP, we have no option but to pay the extra toll, we do wish to register a complaint. It hardly seems fair to be asked to pay more for poorer service from your Washington, D. C., Alaska News Service than ever before. Since UP has been expanding in Alaska, one would think the rates would go down instead of up.

“In our opposition’s issue of January 27 was an article about Governor Gruening, Joseph N. Kehoe, U. S. District Judge, Division Two; Frank C. Bingham, U. S. District Attorney for Division Two; Anthony J. Dimond, District Judge for Division Three; and Harry O. Arend, U. S. Attorney for Division Four. In the same issue of the opposition was a not so important article from [150] Washington, D. C., about ‘Alaska May Escape a Ship Rate Boost.’”

That is from the News. There is a P.S. on that, too.

“Time after time we have been scooped on important Alaska news from Washington.

“We are your oldest patron and booster in Alaska, yet when you recently took in the Anchorage News, we took second place in getting our news until we made a kick. And just this week, we found

(Testimony of Marie J. Flood.)

that radio UP was shoved ahead of us. When communication is bad, with only one circuit, this throws us behind.

“A little better service from Washington, D. C., would be much appreciated. Yours very truly, Sid D. Charles.”

Now, here is one the 26th of August, 1949, from Mr. Charles to United Press Associations in Seattle. Attention: Mr. Fred J. Green.

“We are in receipt of your letter of August 19th with regard to the proposed rate raise.

“We have asked Captain Major, in charge of the Signal Corps office here, for clarification. It was the first he had heard of it. He promised to write his headquarters and let us know.

“When we get the straight of the matter, if as represented, we shall go to the mat in a publicity campaign. Meantime, we would like to get from you some [151] Senators and Representatives in Congress who have UP affiliations and might help in a campaign. There is no use going to our delegate.

“In fact, there seems to be a possibility that political pro-Gruening forces may be trying to shut the UP from Alaska because the papers which take the service are anti-Gruening.

“Frankly, in case the raise is made, we cannot afford to pay it. While on this subject we would like to know if our service and that of the Anchorage News is on the same channel and for the same hour. As we understand it, the AP channel all their

(Testimony of Marie J. Flood.)

Alaska papers at the same time. The Chronicle, our rival, for instance, gets one hour service in the morning and one hour in the afternoon, gets twice as much coverage as we do, and it costs them just about half what it does us.

“We have been promised when you received any new patrons in Alaska our rates would be adjusted and lowered accordingly, but instead they have been raised.

“We are willing to make a fight against the apparent discrimination in favor of the AP against the UP in Alaska, but we also want cooperation on your part. Very truly yours, Sid D. Charles.”

Here is one from the Daily News, December 27, 1949, dated at Ketchikan, to United Press Association, General [152] Offices, News Building New York. Attention, Carl B. Molander:

“Your teletype and press service is costing us just twice the amount the Chronicle, the opposition paper here, pays to Associated Press. They also get twice the wordage, one hour in the morning and one hour in the afternoon. We get one hour daily, from 11:00 a.m. to 12:00 noon.

“In a letter dated September 4, 1945, your Mr. Dan Bowerman said: ‘As we added other clients in Alaska, of course, we would prorate the operator cost among them, so that the cost would decrease to you.’

“On the contrary, you have added other patrons and our costs have kept increasing.

(Testimony of Marie J. Flood.)

“On October 9, 1946, Mr. Bowerman, said, on advice from New York:

“That the United Press share the operator expense with you, on an open basis for an indefinite period of time, while we continue our efforts to line up added clients to share the expense. We simply would reduce your billing by \$25 per week and absorb the costs ourselves. Then if we succeeded in adding one more client we would bill the \$25 operating expense to him. If we added more than one, the total expense would be split three or more ways, bringing your figure down below \$25.’

“Since that letter was written you have added the [153] Anchorage News, besides, we understand, some radio stations. We are told that the latest radio station, KALA, at Sitka, channeled with the same news and at the same hours as our news, has been given a reduced combination rate. If that is true, why shouldn't we receive the same benefit?

“We are perfectly willing to change our hour to get on the same channel with Anchorage News in order to cut costs.

“Frankly, we must cut costs. It just isn't in the cards to pay twice as much for half the news which our opponent gets here through the Associated Press. Unless our rates can be adjusted co-operatively and in combination with other UP patrons in Alaska, we shall have to make some other arrangements. Yours very truly, Sid D. Charles.”

(Whereupon Court adjourned until 10:00 o'clock a.m., April 14, 1955, reconvening as per

(Testimony of Marie J. Flood.)

adjournment, with all parties present as heretofore, and the jury all present in the box; whereupon the witness Marie J. Flood resumed the witness stand, and the Direct Examination by Mr. Faulkner was continued as follows.)

Mr. Faulkner: Is the Court ready to proceed?

The Court: Yes.

Mr. Faulkner: I was reading the letters which were [154] admitted by the plaintiff. I will continue with the one of January 3, 1951, which was a letter from Mr. Jack Bisco, United Press Associations, New York, to Sidney D. Charles, The Daily News, Ketchikan:

“Dear Mr. Charles:

“The unusual increases in expense which the United Press has had to bear in 1950 are without precedent in our entire history—unmatched even by the extraordinary costs of covering World War II.

“The rising tide of big news from Korea and other theaters of international conflict plus uncommon activity on the news fronts at home have caused a heavy drain on our resources, and there is no sign of abatement in this surge of big events which must be reported punctually and comprehensively.

“During the year just past we absorbed the cost of the constantly widening scope of world news coverage while, at the same time, we met increased labor costs and, more importantly, faced up to a five-week strike to prevent those costs from going

(Testimony of Marie J. Flood.)

even higher. We fought the strike through and achieved the settlement which we believe had healthful effect on the industry as a whole.

“During all this time—through the strike, the warfare abroad and its ramifications, and while other labor costs were rising—we delayed exercising our contractual right to assess. We undertook to bear all [155] these extra costs ourselves and we continued to absorb them through 1950.

“Now the time has come when we must adjust our rates in order to meet the tasks before us. In accordance with the provisions of our agreements covering extraordinary costs, we are obliged to increase the rates for United Press service by 10%, effective with the week beginning January 7, 1951.

“We do this with confidence in your understanding and co-operation and with our appreciation for your support. Sincerely yours, Jack Bisco.”

Here is a letter from Sid D. Charles to United Press Associations. Attention: Mr. Bisco. 23rd of January, 1951.

“Dear Mr. Bisco: We have given your letter of January 3rd considerable thought and while we understand and sympathize with your problem, we are in the ‘same boat.’

“Until such time as we are able to make other arrangements, we must go along with you, but to compensate for this raise in rates, we must ask that you cut down our wordage or time to half an hour beginning immediately. Because of competition of another daily, we cannot advance our prices to meet

(Testimony of Marie J. Flood.)

the rising costs of production, so must take this means in keeping expenses down.

“In going over our contract and correspondence with [156] you, we find ourselves being bound for a longer and longer period of time and for a substantially higher rate than we started out with, which was to be reduced instead of raised when more customers were brought into the Association. We would like at this time to come to an agreement whereby the contract between the Ketchikan Daily News and the United Press could be terminated by either party on 60 days’ notification. Very truly yours, Sid D. Charles, Publisher.”

And here is a letter from the Daily News. Oh, I think I read that one. This is the one from Mrs. Flood cancelling the contract, dated November 14, 1953. I think I read that to the jury yesterday. Oh, here is one, 2/20/51. I thought this was the same as the one I just read, from Sid Charles to United Press Association, Seattle. Attention: Harry Carlson.

“Dear Harry: We appreciate your effort in trying to work out a rate for us, but we do not wish to involve ourselves in such a long term contract. Therefore, we will accept the boost in rates proposed in Mr. Bisco’s letter of January 3rd.

“We are still anxious to put our contract for service with you on a more definite termination basis and would appreciate your looking into the matter. We have all other agreements for service

(Testimony of Marie J. Flood.)

on a 60-day cancellation [157] basis. Very truly yours, Sid D. Charles.”

Then the one of November 14th from Mrs. Flood saying that the contract was cancelled has already been read, I believe. Now, here is a letter to Mr. Belnap from Mrs. Flood dated the 14th of January, 1954. I believe this is the one to which Mr. Belnap referred yesterday.

“Dear Mr. Belnap: I realize that we should have notified you 6 months before contract renewal which is automatic. It is unfortunate that this was not done but it does not change the fact that we wish to cancel our service with United Press.

“We have found that we are able to get three files of one hour and one half hour all before 12:00 noon at a cost less than that we are paying for, from United Press. Having two papers in a town of 6,000 doesn't leave us much margin of profit—in fact, we have been operating at a loss for the past seven years. We must make every effort to cut our costs, keep the quality of the paper above that of our opposition and get the Alaska News first.

“On this last point, Mr. Charles had considerable correspondence with Harry Carlson, formerly of the Seattle Bureau, on the poor coverage we have gotten in the past on Alaska News. We have been consistently scooped on stories that are of interest to our area by [158] the Chronicle that carries Associated Press. In the past we have made our own arrangements with Bob DeArmond who acted as

(Testimony of Marie J. Flood.)

your stringer to get coverage on the Alaska Legislature.

“In regard to the rates, we have protested each new raise, with the exception of your last one which began in May of this year and again raised the rates \$4.18 per week. When we began our contract with you it was with the understanding that the rates would be lowered when you were able to get more members into the Association. I believe you have added more members, but instead of reductions, we have had raises totaling about \$23.00 per week.

“I hope the above clarifys our reasons for canceling our agreement with you and you will discontinue filing anything for us beginning week of January 18th. Sincerely yours, M. J. Flood.”

And here is a letter from Mr. Belnap to Mrs. Flood dated January 18, 1954:

“Mrs. M. J. Flood, Ketchikan Daily News, P.O. Box 79, Ketchikan, Alaska. Dear Mrs. Flood. Thank you for your letter of January 14 sent in reply to my telegram of January 13. In my telegram, I said I had just received word from our New York office regarding your recent letter directed there in which you referred to a previous [159] letter of November 14, the original of which was never received in New York.

“I also said I was perplexed by your reference to cancellation since the agreement between us had renewed a short time ago and a new term is now in effect. In addition there is an extension of the

(Testimony of Marie J. Flood.)

term by the conditions of a modification to the principal agreement made in February, 1950.

“Clause Eighth of the agreement between us establishes machinery for the termination of that agreement. Neither of us has ever entered a cancellation against the agreement in conformity with the provisions established in Clause Eighth, and the agreement thus continues in full force and effect. We cannot, therefore, discontinue service to you.

“I have taken the liberty of turning over to Martin Heerwald, our Washington-Alaska news manager, your comments on Alaska news coverage. We have a continuing program to expand and improve our service in every department, and your comments will be helpful to him. Heerwald will be in Alaska himself later this week, and I have asked him to get in touch with you for a more detailed discussion of these points.

“With respect to our rates, my records here show that the increases you mentioned have been more than [160] offset by reductions which have totaled nearly \$50 per week during the past seven years. The latest reduction, amounting to \$20, was made in February, 1950, and is still in effect. It seems to me on the basis of the information I have here that we have been very fair in the matter of rate reductions in the past, making these in the face of constantly mounting costs to us to produce our news report. I’m personally prepared to discuss the matter of rates with you further if you wish.

“We have always been proud to be on your team

(Testimony of Marie J. Flood.)

at Ketchikan, and I regret very much that a misunderstanding has arisen with respect to our agreement. It's my earnest hope that this letter will help to clarify the matter and that everything will shortly be straightened out to our mutual satisfaction.

“With warmest regards and good wishes, I am cordially yours, David F. Belnap.”

Here is a letter from Mr. Charles to United Press Associations in New York, dated the 22nd of January, 1954:

“On November 14th, 1953, we wrote your office and again on January 14th, 1954, we wrote to Mr. Dave Belknap of your Seattle office explaining that the continued high cost of United Press service here at Ketchikan makes such cost prohibitive to the Ketchikan Daily News. The Daily News realizes that, pursuant to its written contract, [161] notice of cancellation should have been given at least six months before the end of the five-year period elapsed, or by March 1, 1953. While the Daily News was aware of the date of Sept. 1st, 1953, as being the end of the five-year period, it was not the intention to leave the contract renew automatically.

“If the Daily News is to continue to operate, the cost must be reduced. We have cut every other cost item possible and are still losing money. In order to be able to continue with United Press Service, we need twice the amount of the present service for the same price we are now paying. Our competition, The Ketchikan Chronicle, is now receiving two

(Testimony of Marie J. Flood.)

hours of press service at slightly less than the cost of one-hour service we are getting from United Press.

“We have relied heavily upon promises from United Press that United Press users would increase in number in Alaska, thereby cutting the cost. On the contrary, the users have not increased appreciably and the price has steadily risen. This should be an old story by this time.

“Surely, you can see the practical consequences of insisting upon attempting to hold the Daily News to the contract which, at one time was reasonable as to cost, but which has become oppressive and prohibitive to us [162] due to rising production and labor costs.

“Your reply by return mail will be appreciated. Very truly yours, Sid D. Charles, Publisher.”

These are just copies, I think, of letters that I have read already; yes.

Q. (By Mr. Faulkner): Now, Mrs. Flood, I will ask you if—how long have you been with the Daily News? A. Eight years.

Q. And in that time or most of that time did you take this United Press service?

A. Yes, we did, sir.

Q. Did you typewrite letters for Mr. Sid Charles? A. Yes, I did.

Q. To the United Press Associations?

A. Yes.

Q. What were they? I mean, were they with reference to the service?

(Testimony of Marie J. Flood.)

A. I wrote all the letters.

Q. I mean, were they letters of complaint?

A. Letters of complaint; yes, sir.

Q. And in addition to the letters, some of which were introduced here, did you write any telegrams?

A. Yes; I took telegrams. Most of them we did not keep copies of, but most of them were queries for material that we needed. [163]

Q. And that you didn't get?

A. That we didn't get.

Q. You had to send telegrams?

A. Well, we called them queries asking for material that we needed.

Q. Now, do you recall that period that you said—there was some correspondence in here about it, answering it, from Mr. Carlson—do you recall the query you sent asking them to get the news from Washington on the hearings on the Butler Bill and on the aboriginal rights controversy and the pulp bid; do you recall that?

A. I knew that they were sent, but I can't recall whether I sent them or whether they were sent by Mr. Charles.

Q. But those telegrams were sent?

A. Were sent out of our office.

Q. And it was in answer to the telegrams that Mr. Carlson wrote the letter—

A. Wrote the letter.

Q. —that I read yesterday, quoting from Miss Mullany? A. Yes.

Mr. Faulkner: Pardon me just a second, your Honor. I think that is all.

(Testimony of Marie J. Flood.)

Cross-Examination

By Mr. Dimond:

Q. Mrs. Flood, did you type up all of these letters that [164] Mr. Faulkner has read that were signed by Sid Charles? A. Most of them.

Q. Do you know of any other letters that you wrote for Sid on the same subject matter?

A. I don't recall any.

Q. Do you know how many telegrams you sent on queries?

A. I can't say how many. I have sent several in the past eight years.

Q. You don't know exactly when they were sent?

A. No; I can't say.

Q. What was this Butler Bill, this query on the Butler Bill? Do you know what that was about?

A. I can't recall offhand.

Q. You testified that you mailed the letter of November 14, 1953? A. I did.

Q. Do you recall specifically placing the stamp on the envelope and placing it in the mail slot?

A. I did.

Q. You do recall doing that. This is 1955. How many letters do you ordinarily mail in a month, we will say?

A. Well, probably about fifty; but that was a very important letter to us, and I certainly remember sending it.

Q. You definitely recall having put that particular letter in the mail box up here at the Post [165] Office? A. Well, that is hard to say.

(Testimony of Marie J. Flood.)

Q. In other words, you are just saying that in the usual course of business you would have mailed it?

A. I would have mailed it; yes, sir.

Q. Were you aware of the fact, Mrs. Flood, that under the wording of the contract a notice of cancellation should have been sent by registered mail?

A. At the time I sent the letter, no; but shortly afterwards why I read the contract thoroughly and found that I should have sent it by registered letter, so the one I sent on January 14th I did send by registered letter to be sure that was gotten and that I would know that they had gotten it.

Q. But this letter of November 14th was not sent by registered mail?

A. Was not sent by registered mail.

Mr. Dimond: That is all.

Redirect Examination

By Mr. Faulkner:

Q. Just a minute. Mr. Dimond asked you if you recalled what the Butler Bill was. I might ask you if that was not a bill for the election of a governor of Alaska? Do you recall that now?

A. I don't, Mr. Faulkner. My end of the business is the [166] business end, and I only hear these things from Mr. Charles or from Mr. Brice, and I know them only generally.

Q. But you knew that there was a query sent there about that? A. Yes, I do.

Mr. Faulkner: I think that is all. [167]

GENE BRICE

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Faulkner:

Q. Will you please state your name, Mr. Brice?

A. Gene Brice.

Q. Where do you live? A. Ketchikan.

Q. And how long have you lived here?

A. Well over forty years.

Q. What is your business? [173]

A. Managing editor of the Daily News.

Q. How long have you been working in such capacity? A. Three and a half years.

Q. And how long have you been in the newspaper business? A. Nearly twenty-five years.

Q. And where were you before you came to the Daily News? A. With the Chronicle.

Q. Mr. Brice, I might ask you, are you familiar with the method of gathering news by a local paper, such as the two in Ketchikan, for getting news for their readers? A. Yes.

Q. What are the two large sources of news?

A. Wire service?

Q. The associations that furnish the news?

A. Associated Press and United Press.

Q. Now, before you came to work for the News you said you were employed where?

A. By the Chronicle.

Q. How long were you employed there?

(Testimony of Gene Brice.)

A. Twenty years.

Q. Twenty years. Now, Mr. Brice, I first want to ask you—you have seen the deposition of Mr. Bowerman, I think it is—especially the form of telegram. Mr. Bowerman in his deposition, which I think you have seen, sets up a form of telegraph news service for one day as a sample of the [174] news service they send. Have you seen that?

A. No; I don't think I have.

Q. It was attached to the deposition. I think you saw it the other night.

A. I don't recall.

Q. I thought you did. Well, now, this is a telegram that Mr. Bowerman has testified is the type of news service furnished, that they would furnish to the Ketchikan News, dated August 12th—I don't know what year; but I will ask you if you will just look that over; you don't need to read it in full. Now, what I wanted to ask you is whether that could well have come as a news service on some particular day?

A. Yes.

Q. To the paper?

A. Yes; it could have.

Q. But as a general rule did you get that type of telegram from the United Press, that type of news, each day?

A. Well, I would say, occasionally.

Q. Occasionally?

A. Yes.

Q. So that this might well have been the day's news that they sent. Now, I will ask you if in your experience on the two papers that you had occasion to notice the type of news sent by the United Press and the extent of it to [175] the News?

(Testimony of Gene Brice.)

A. Oh, yes. When you work for one paper you always keep your eye on the news carried by the other paper. That is only natural. You watch the opposition or the competition, as you might call it.

Q. Now, Mr. Brice, do you keep—does each newspaper keep a file of the other newspaper's publications?

A. The Daily News keeps a file of the Chronicle, but the Chronicle does not keep a file of the Daily News.

Q. Did you notice prior to the time you went with the New instances of news that was sent by the Associated Press of importance which did not come to the News?

A. Oh, on numerous occasions.

Q. Did not appear in the News. Now, did you take the file of the Chronicle and mark some of those instances?

A. Yes. I took the file for the Chronicle and a file for the Daily News, put them out on a desk so I had the two copies for each day for comparison. I went through the Daily News and then looked at the Chronicle of the same date to see if the Chronicle had stories that the United Press did not carry.

Q. I will hand you what purports to be an issue or a page of an issue of the Chronicle, January 13, 1954, and ask you if you have marked news items there which were received by the Chronicle which did not appear in the News? [176]

A. Yes.

Q. Now, what are those two in that particular issue?

(Testimony of Gene Brice.)

A. One quotes Eisenhower as saying that Alaska is not yet ready for statehood.

Q. And what is the other one?

A. The other one concerns the Geological Survey Office sending men north for surveys.

Mr. Faulkner: We want to offer these. I think that, if you have no objection, we can put them all in an envelope. They are mostly set up in my answers to their interrogatories, but not all of them, not quite all of them; there are others.

Mr. Dimond: Are there others then in addition to your answers?

Mr. Faulkner: I think there are a few.

Mr. Dimond: I was wondering, your Honor, if, as long as the witness testified that these articles did not appear in the defendants' newspaper but did not testify as yet that United Press did not send similar articles in their dispatches, whether or not they would be admissible?

Mr. Faulkner: We will come to that.

The Court: I think there should be that testimony, that the United Press didn't send it.

Q. (By Mr. Faulkner): Well, Mr. Brice, how many words a day did United Press send you under its contract?

A. Approximately thirty-five hundred. [177]

Q. Was that sufficient to meet your needs if you used the entire amount? A. No, it was not.

Q. Was there any, in your experience, was there any item of news contained in the United Press dispatches that were not published in the News?

(Testimony of Gene Brice.)

A. During the two years or longer that I handled the United Press news I believe on two days items possibly two or three inches in length were deleted from the paper.

Q. What were they?

A. They were items which I considered of secondary nature; because of a heavy advertising day and considerable local news these items were left out because they were of no importance.

Q. Now, these items which you refer to in this issue of January 13, 1954, the one quoting the President on statehood for Alaska and the other with reference to the Geological Survey in Juneau, would they be considered of importance to the readers of the News?

A. I believe the people are interested in statehood.

Q. And what about the Geological Survey?

A. That is of some interest here, particularly where it mentions the possible moving of their office from the capital at Juneau to Fairbanks.

Q. Now, one of these articles is to the Chronicle by the [178] "Chronicle Capital Correspondent." Do you know who that was?

A. George Sundborg.

Q. He was also agent of the United Press?

A. That is my understanding.

Q. Now, does that go for all of these articles that are marked that way—"Capital Correspondent"?

A. Yes.

Q. And that was the same agent that the United

(Testimony of Gene Brice.)

Press furnished the News. Now, I will hand you one of January 14, 1954, an issue of the Chronicle and ask you if you marked that and if that contains an article that was not in the Daily News.

A. That is correct.

Q. What is that article?

A. This article says, "Judge Folta May Halt Funds for Election."

Q. And that is an article of considerable length?

A. It is, yes.

Q. And importance? A. It certainly is.

Mr. Faulkner: I will offer that in evidence.

Mr. Dimond: I don't want to insist that counsel identify each individual one. All I want the witness to establish is that none of these articles or certain of them [179] were not contained in a transmission sent by United Press, not just that they didn't appear in the rival newspaper.

Mr. Faulkner: We are covering the period now when Mr. Brice was there, and I promised to connect that up with another witness to cover the period prior to that, but I think these all come within Mr. Brice's knowledge.

The Court: Well, I don't think that the objection is that these clippings don't cover a particular period but that Mr. Brice has not excluded the possibility that the United Press sent out this news. Isn't that the objection?

Mr. Dimond: That is the objection.

Q. (By Mr. Faulkner): I want to know if the News got these items from the United Press?

(Testimony of Gene Brice.)

A. The News did not receive that story from the United Press.

Q. Now, I will hand you one dated January 12, 1954, about the suicide of a prominent Fairbanks man, Jim Barrack, and ask if the News got that one?

A. No; it did not. The Daily News did not receive that story from the United Press on this day.

Q. Now, I hand you one of January 8, 1954, which has three items marked, four items marked, two of them by the "Capital Correspondent" and the other two—no; I think they are all by the—I will ask if you got those through United Press or any other way.

A. No. On this portion of the sheet I have four stories [180] marked, all concerning Alaskans or Alaska projects.

Q. What are they?

A. One is the assignment of Territorial Highway Policeman Jessie Edwards from Ketchikan to Anchorage. Another involves the E.S.C. investigation contemplated by the Legislature. A third item refers to Angoon and Seldovia listed for work relief projects. The fourth item concerns the employment of an Alaskan with the Territorial Police.

Q. I will hand you an issue of January 8, 1954, of the Chronicle and ask if you have marked some articles in there that were not received by the Daily News?

A. Yes. There are four items marked on this page.

(Testimony of Gene Brice.)

Q. Just what are they, briefly?

A. One is referring to equipment added by the Employment Security Commission. Another concerns Mrs. Al White's hopes to visit Eisenhower in Washington. Another is a recommendation for shutting down more than half of the fish traps in Southeastern Alaska.

Q. I will hand you another one marked, in the Chronicle, marked January 8, 1954, and ask if that contains some articles you have marked?

A. It does. One item concerns Alaska Public Works and road appropriations facing heavy cuts. Another one refers to the fact that there have been few filings for the 1954 [181] election in the Territory.

Q. Are some of these quite extensive articles?

A. Yes; some of them are.

Q. And did any of these articles I am showing you come to the News through United Press?

A. No.

Q. So that you didn't have them?

A. That is correct.

Q. I might ask you, generally, Mr. Brice, does that apply to all these articles that you have marked yourself?

A. Yes, it does.

Q. You marked them with a red pencil?

A. I marked them by comparison between the Chronicle and the Daily News. Those items marked did not appear in the Daily News on that day.

Q. Now, I will hand you a Ketchikan Chronicle

(Testimony of Gene Brice.)

of January 7, 1954, and ask if that contains something that the Daily News did not get?

A. Yes. This concerns arguments in court regarding the Territorial Property Tax.

Q. And I hand you another one, two articles from the United Press agent in Juneau sent to the Chronicle by the Chronicle staff correspondent, and ask you what those are?

A. One concerns a winter relief project for Alaska as proposed in Washington, D. C. Another one concerns Federal [182] tin stockpiling, which would involve Alaska.

Q. I will hand you one of December 29, 1953, and ask you if that contained any similar articles of any importance.

A. One concerns territorial school bus costs, saying that the costs are far above anticipation. Another concerns an Anchorage man who is held for a slaying. Still another involves the mayor of Fairbanks vetoing an ordinance regarding gambling.

Q. Now, I will hand you an issue of the Chronicle of December 28, 1953, and ask you how many articles of Alaska news that contains which were not in the Ketchikan News? A. Seven.

Q. What are they, briefly?

A. One concerns the refusal of the Territorial Auditor to pay the costs of Alaskans attending F.B.I. classes. Another concerns the resignation of Tony Schwamm as Director of the Territorial Department of Aviation. Another one concerns work projects starting in Southeastern Alaska. Still an-

(Testimony of Gene Brice.)

other concerns a meeting of the Territorial Road Board in Juneau. One other item here—"Congressman Asks Why Farley Would Ban Herring Take.

Q. I hand you an issue of the Chronicle of December 24, 1953, and ask if that contains similar articles not sent to the News?

A. This concerns two items which were not received by the [183] News. One of them is that the Civil Service Commission was studying bonus pay for employees of the Government in Alaska. Another one concerns the payment of \$100.00 a day to an investigator for the Territorial Legislature.

Q. I will hand you two other clippings of December 24, 1953, from the Chronicle and ask what those contain which the United Press did not send to the News?

A. One concerns the refusal of the Territorial Auditor to pay for typing done by the Statehood Committee. Another says that the balance of public roads funds is frozen. This one concerns a gold claim which blocks a section of an Alaskan highway.

Q. I will hand you an issue of December 23, 1953, and ask if that has similar articles, some from the Associated Press, some from the special correspondent, the agent of the United Press, to the Chronicle, which did not appear in the News?

A. The heading on one item is, "Four Alaskan Collegians to Seek Award." Another item from the Chronicle's Juneau correspondent is, "Only 15 Fire Trucks Exempt From Licenses" in Alaska. An-

(Testimony of Gene Brice.)

other item from Juneau—"Canadian Claims Yakobi's Nickel Ore Promising."

Q. Is that all? A. That is all on this.

Q. Do you know—that one regarding the nickel claims is a headline article, is it? [184]

A. That is correct.

Q. And that is a matter of considerable importance? A. It is.

Q. Now, I will hand you one—this is another one of December 24th—and ask if there are some items marked there, generally.

A. One is an application of the Territory to have more schools constructed in Alaska. Another one concerns completion of the last section of the Alaska Road Commission's program in the Territory.

Q. I hand you one of December 21, 1953. an issue of the Chronicle, and ask you if that contains similar items which were not carried by the News.

A. Yes. This Page 1 has five items.

Q. Just what are they?

A. One is that "Anchorage Voters May Buy Utility." Another is that Don Foster, Area Director of the Alasaka Native Service, is conferring in Washington, D. C., regarding a permanent job. Another item concerns vocational education in Alaska. Still another concerns new land claims in regard to native villages. A fifth item concerns the Territorial Legislature Session Laws and the penalty assessments of \$3300.00.

Q. That was where the paper up there printed

(Testimony of Gene Brice.)

the Session Laws, didn't get them out in time, and had to pay a [185] penalty of \$3300.00?

A. Yes, that is right.

Q. Now, I will hand you another issue of the Chronicle of December 19, 1953, which has a banner headline—"Fish Trap Reduction Plan May Be Altered," and ask if that issue contains similar items of news which were not sent to the News?

A. This is an Associated Press story which was carried by the Chronicle and the Daily News did not receive. It concerns a reduction of fish traps in Alaska and the fact that that reduction plan might be changed by the Commissioner of Fisheries.

Q. Is there any other item in that particular issue?

A. Yes. There is one here that says, "Statehood for Hawaii on Agenda." Another is a request by fisherman to open up Bristol Bay to trolling. I see one more item on this page and that regards the "All-Alaskan Chamber to Convene Soon."

Q. Now, I will give you one of December 11, 1953, and ask you if that issue of the Chronicle contains similar items which did not appear in the News.

A. These two items did not appear in the Daily News. One was by Associated Press. The other was by the Chronicle's Juneau correspondent. One regarded the damage suit involved in the big fire at Union Bay. The other heading [186] says, "Twenty Days Left to File Land Titles."

Q. Now, I hand you another issue of the Chron-

(Testimony of Gene Brice.)

icle, dated December 10, 1953, with a banner headline—"Governor, Williams Won't Oppose Dams"—and ask you what items that issue contains which did not appear in the News.

A. One reports progress——

Q. I mean, which did not come to the News from the *Associated Press*.

A. There were six news items carried in the *Chronicle* on this day which did not come to the *Daily News* through *United Press*.

Q. What are they?

A. One concerns the dental examination carried on by the Territorial Board of Dental Examiners with the prospect they be turned over to the University of Washington. Another concerns the Director of the Alaska Department of Fisheries going south to attend a conference. Still another concerns opposition to power dams on the Copper River at Cordova because of the potential damage to fisheries.

Q. Is that the one that dealt with the Aluminum Company which is planning to build a dam there?

A. That is right; the proposed Wood Canyon dam. There is one story here that says nearly a million dollars in back wages to go to Alaska Road Commission crews. We [187] did not have that story.

Q. You didn't have that at all? A. No.

Q. Now, I will give you another issue of the *Chronicle* of December 4, 1953, and ask you if similar articles were marked in there.

(Testimony of Gene Brice.)

A. This is another and more detailed story regarding the Copper River dam. It is almost two columns in length. Another item concerns an appointment by the Territorial Attorney General of an assistant. Still another concerns the Secretary of Alaska working on a list of relief projects for Alaskans. Another item reports the appointment of Doctor Alexander Baird as manager of the Alaska Development Board. A Washington, D. C., item tells of the selection of two Seattle men, one of them a former Alaskan, to be consultants to Secretary McKay.

(Whereupon Court recessed for five minutes, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; whereupon the witness Gene Brice resumed the witness stand, and the Direct Examination by Mr. Faulkner was continued as follows:)

Q. Mr. Brice, I just have one or two more items, two I want to ask you about; this one in particular. I hand you the front page of the Ketchikan Chronicle of December 1, 1953, with some articles marked in red ink, and ask you [188] if your same testimony applies to those articles.

A. This story concerning a study of Swan Lake as a proposed hydroelectric power project for Ketchikan was in the Chronicle from its Juneau correspondent but was not provided to the Daily News.

Q. It is an item of considerable importance?

(Testimony of Gene Brice.)

A. Yes, it is.

Q. And what else is in there?

A. Here is a Unuk River road study planned soon. This item says that Claire Wilder, former publisher of the Petersburg Press, took over as U. S. Marshal for the First Division today. We did not have that item.

Q. Now, I will hand you an issue of the Ketchikan Chronicle of July 8, 1952, and ask if there is something marked in red in that one.

A. Yes. This concerns General MacArthur's keynote speech at the Republican Convention in Chicago.

Q. Was that sent to the News by the United Press?

A. No, it was not. We had reference prior to the Convention that MacArthur would make the keynote speech, but after he did make it we had no word on it whatsoever.

Q. Now, there is one other issue here that we referred to, the Governors' Convention in Sacramento, where Governor Gruening was present, and he complained about the news dispatches which were sent by the United Press to the [189] Ketchikan Daily News, and, if counsel has no objection that I read that article, that dispatch as it was sent—this refers to the item of the letter Governor Gruening sent, which we introduced yesterday.

“Sacramento, Calif. (U.P.)”—United Press. First I may say, this is in the issue of the Daily News of April 24, 1948.

(Testimony of Gene Brice.)

“Governors of eleven western states and Alaska today asked the federal government to avert a ‘serious’ power shortage in the west.

“The western governors’ conference passed a resolution asking ‘sufficient’ funds to develop power projects and soil conservation programs. The money for power was requested for multiple purpose flood control, projects already in operation or being planned.

“The resolution also asked the army to allocate at least 6,000 tons per month of anhydrous ammonia, a vital fertilizer base, for use in western plants. Local communities were asked to increase plant capacity for production of ammonia to supply a ‘pressing need.’

“Other action by the conference included a unanimous resolution urging statehood for Hawaii, and a request to Congress for a \$20,000,000 deficiency appropriations for improvement of forest highways.

“The conference set its next meeting for Salt Lake [190] City, in November.

“Among the governors attending the conference as guests of California’s Earl Warren were: Herbert C. Maw, Utah; Mon C. Wallgren, Wash.; John Hall, Oregon; Vail Pittman, Nevada; C. A. Robins, Idaho; Sam C. Ford, Montana; and Ernest Gruening of Alaska.”

Mr. Faulkner: Now, if the Court please, I want to ask Mr. Brice one general question.

Q. (By Mr. Faulkner): These clippings here, Mr. Brice, of the Ketchikan Chronicle, I will ask

(Testimony of Gene Brice.)

you if you marked items in red in all of those clippings? A. Yes, I did.

Q. And all of those refer to items of news which appeared in the Ketchikan Chronicle which were not sent to the News by the United Press?

A. They were not sent on this day.

Mr. Faulkner: Now, Mr. Dimond has agreed that we may introduce these altogether, your Honor, instead of taking them up one by one.

The Court: They may be introduced.

Mr. Faulkner: That will make the entire exhibit of those items. I have an envelope here I think will take all these.

The Clerk: That will be Defendant's Exhibit H.

Mr. Faulkner: Exhibit H? [191]

The Clerk: H.

Mr. Faulkner: I think that is all.

Cross-Examination

By Mr. Dimond:

Q. Mr. Brice, this article in relation to Governor Gruening, you were not with the News at that time?

A. No, I was not.

Q. You didn't testify on that particular article?

A. No.

Q. Now, is it your testimony that all of the news articles marked in these clippings which did not appear in the News but which appeared in the Chronicle were not sent to the News by United Press?

(Testimony of Gene Brice.)

A. With the possible exception of two or even three items which may have been left out because of their minor importance on a heavy advertising day.

Q. But you know that the others were not sent to the News, were not received by the News?

A. That is correct.

Q. Do you preserve copies of the teletype transmissions sent to you? A. No.

Q. Now, what are the mechanics of this thing? This thing comes over a teletype; is that [192] right? A. That is a transmission.

Q. This is a transmission. And do you edit the transmission that comes over the teletype?

A. Yes.

Q. And what do you do? Do you tear off a piece that you want in the paper and send it to the printer?

A. I clip it as it comes through the teletype.

Q. In other words, you tear this thing apart as it comes through? A. That is correct.

Q. And you don't preserve those pieces that you take out of this transmission? You don't save this thing? A. No.

Q. Well, how can you testify positively then that United Press on certain designated dates did not include in their teletype transmission one or more of the articles that you said were not included?

A. The situation was such that it was absolutely necessary that I use all wire reports in order to have a presentable newspaper.

(Testimony of Gene Brice.)

Q. You mean you used every bit of this transmission?

A. Yes; with very few exceptions, or in instances where the Associated Press had carried the story the previous day I sometimes cut the story down to a very small item or deleted it. [193]

Q. You testified that you worked for the Chronicle prior to coming to the News? A. Yes.

Q. Do you know how many hours or minutes the Chronicle was receiving Associated Press dispatches? A. One hour and a half.

Q. One hour and a half. And the News was receiving one hour? A. One hour.

Q. Well, don't you think it is possible that with an additional half-hour of news that there would be bound to be more items of news sent to the Chronicle than to the News?

A. They would have more words; yes.

Q. And they might even have more articles?

A. Yes.

Q. With an additional thirty minutes?

A. Yes.

Q. So that might explain some of the instances there where the Chronicle got articles you didn't have in the Ketchikan Daily News; isn't that true?

A. In some instances; but in the majority of them the exhibits will show that the story was released or announced on the preceding day, which would give the United Press ample time to include it in our file.

Q. But the point I am making is that with an

(Testimony of Gene Brice.)

additional thirty minutes of coverage there is bound to be more [194] news sent to the Chronicle than to the News.

A. That is correct; there would be more items.

Q. Did you ever ask the United Press in your time with the Ketchikan News to furnish you with an additional half-hour of news coverage?

A. Not to my knowledge.

Q. Do you recall that United Press ever offered to give the Ketchikan News an additional half-hour of coverage without any additional charge?

A. No, I do not recall anything like that.

Q. After you terminated the contract with United Press in February, 1954, immediately after that you signed up with Associated Press; isn't that true; you started receiving Associated Press reports? A. That is correct.

Q. And how much time did you get from Associated Press? Was it ninety minutes?

A. It was an hour and a half.

Q. An hour and a half a day. At that time or shortly after that had you made any arrangements with one of the radio stations in Ketchikan which was served by Associated Press to get the radio station news copy for publication in your paper?

A. There was no permanent agreement. We asked the Associated Press if it would be all right to get the additional [195] wordage because at times the radio station had items which were not on the news wire, and the Associated Press said that would

(Testimony of Gene Brice.)

be all right because of the communication problem between here and Seattle and the high cost of transmission.

Q. So in some instances you did use the radio station's copy for publication in your paper?

A. In a few instances; yes.

Q. That might account for additional stories; I mean, if the Chronicle had a similar situation, that would account for additional stories there that the News didn't have prior to February, 1954; isn't that true; or, do you know whether the Chronicle had an arrangement similar to that with the radio station?

A. At times the Chronicle would pick up copy from the radio station. It was not regular. It was very irregular.

Q. Did the News ever have such an arrangement when you were being served by United Press?

A. No; because neither of the radio stations took United Press copy.

Q. I think you testified on direct examination that only occasionally was the type of news contained in the United Press August 12th report sent to you by United Press?

A. I said that because it contains an Alaska item and United Press was very lax in sending Alaska items to us. [196]

Q. But you had the same length of transmissions?

A. We had the same number of words; yes.

Q. And, generally, the class of news was the

(Testimony of Gene Brice.)

same throughout the time you were working for Ketchikan News, the type of news that was sent in here?

A. Well, you can't say that because news events change throughout the world from day to day. We received the same number of words.

Q. Which Alaska item are you referring to? Do you recall?

A. I believe at the bottom of the file there is one item involving Alaska.

Q. Now, Mr. Brice, the plaintiff in this action before the trial submitted certain interrogatories to the defendants asking when, or asking for specific instances where plaintiff had failed to furnish an adequate news service, and in answer to that the defendants said: "Answering Interrogatory No. 1, defendants submit the following instances where plaintiff failed or refused to submit to the defendants news of great importance to Alaska and the readers of defendants' paper, which items were published in rival newspapers and which consisted of the following," and then there are sixty-nine separate paragraphs which designate specific dates and items of news that appeared in the Chronicle and not in the News. I think some of those are those which you have identified. [197] Is that true?

A. I really couldn't tell you how many I identified. It seems to me there must be a couple of hundred items.

Q. Well, here are the defendants' answers to the interrogatories of which I spoke, and would you

(Testimony of Gene Brice.)

look at those, starting with No. 1, and tell me whether or not you obtained the information which is contained in those answers?

A. Yes; I did secure those clippings from the file of the Chronicle.

Q. As I recall, some of those clippings are identical with some of the specific instances alleged in those answers. Now, did you help prepare or prepare the information which was contained in those answers? In other words, did you make the comparison between the Chronicle issues and the News issues and pick out items that were not contained in the News but which were contained in the Chronicle?

A. Yes, I did that.

Q. And upon which information those answers were based. Can you recall by looking at these?

A. I see some items here that I distinctly recall clipping.

Q. Well, let's take for example Answer No. 16 on Page 4. The defendants allege there: "An article dated August 13, 1953, regarding the call for bids on the construction [198] of 610 miles of pipeline from Haines to Fairbanks, Alaska, which appeared in most all the papers in Alaska except those served by United Press." Do you recall, Mr. Brice, that that pipeline article was not carried by the News?

A. It was not carried by the News on that day.

Q. Could it have been carried on a prior date?

A. No. It could have been carried on a following date.

(Testimony of Gene Brice.)

Q. Is it also your testimony that on—that it was not received by the News from United Press?

A. No, I do not say that it was not received. It is very possible that we could have had an item like this at sometime previous to the marked clipping or sometime afterwards. That is possible. But we did not get what I would consider a good news story on the project at that time, unless it were one of the few items which were deleted because of heavy advertising and a heavy local news day.

Q. I hand you this transmission of United Press report to Ketchikan News of August 12th, which has been introduced as an exhibit, and showing you the article near the bottom which is entitled Washington, D. C., isn't that an article about the Haines pipeline project? A. Yes, it is.

Q. And that was carried on August 12th, according to this heading on this transmission; and yet you testified that [199] a instance of defective service was because the same article wasn't carried on August 13th.

Now, I wish you would refer to Answer No. 20 on Page 4 where the defendants say: "An article on August 25, 1953, regarding statehood activities at Anchorage." Now, is it your testimony that this article was not carried by United Press or not delivered to the Ketchikan Daily News by United Press on August 25, 1953?

A. I don't recall this specific item. I do recall that we had an item saying that a statehood hearing would be held in Anchorage. I do not recall that

(Testimony of Gene Brice.)

we had a story saying that it had been held and what transpired.

Q. Well, then turn to Answer No. 21, Mr. Brice: "An article on August 27, 1953, with reference to hearings before the Senate Committee on Interior and Insular Affairs on the Alaska statehood bill." Are you familiar with that article?

A. No, I would not be too familiar with it. There were any number of articles involving statehood.

Q. Do you know whether or not this article that is referred to in Answer No. 21, that you have read, was an article that was contained in the Chronicle on that date but not in the Ketchikan Daily News?

A. I simply would assume that from comparing the two papers as of that date, but whether it was August 27th I do not [200] recall exactly. It is difficult to recall the dates of the papers from which I made clippings. I simply prepared them. I had a file of the Chronicle on one side and a file of the Daily News on the other and compared the two papers.

Q. I believe you testified previously, didn't you, how those instances of newspaper clippings, with the exception of two or three instances, none of them were carried in a United Press transmission?

A. That is correct. There were a few that United Press may have had but did not have on that date.

Q. Well, can you testify that this article of August 27, 1953, with reference to hearings before the Senate Committee on the Alaska Statehood Bill

(Testimony of Gene Brice.)

was not carried by United Press to the Ketchikan News?

A. Well, from the list of dates here I couldn't say. I would have to see the actual clipping.

Q. Didn't you say you prepared the information from which these answers were made?

A. Yes; but I did not memorize the dates on which these articles appeared.

Q. Is it possible then on August 27th or even a day or two prior to that that the United Press did carry the same story that you refer to here?

A. Yes, it would be possible. [201]

Q. Now, turn to Answer No. 23 on Page 5. It says: "On September 9, 1953, an article regarding a reward offered for the discovery of the wrecked plane of Ellis A. Hall, which was last seen near Ketchikan." Do you recall that story? It was of considerable importance, I presume. I think we all remember the Ellis Hall accident. Now, Mr. Brice, since you prepared the information upon which these answers were based, do you not recall that on September 9, 1953, the Ketchikan Chronicle carried an article regarding a reward for discovery of the Ellis A. Hall plane but the News did not carry such an article? Is that true?

A. That is true as I recall it.

Q. And is it also your testimony that you did not receive such an article from the United Press?

A. To my knowledge and to the exclusion of these few items which on occasion were left out.

Q. Well, then you will not testify that this par-

(Testimony of Gene Brice.)

ticular article on Mr. Hall's plane may not have been sent to you by United Press either on that date or prior to that date?

A. Not that I recall. As I say, I worked these two files. I had the Chronicle file and I had the Daily News file. When you check over dozens of items and dates of them, it is possible that I could have made an error in the [202] date of one on the 11th and possibly the 12th.

Q. Let's turn to, let's skip over to Answer No. 47 on Page 7: "An article dated December 4, 1953, by the Associated Press with reference to relief for indigent fishermen; one by plaintiff's agent referring to power development on Copper River." As I recall your testimony on direct examination, a clipping was identified by you from the Ketchikan Chronicle which contained an article on the power development on the Copper River, which you testified not only was not contained in the Ketchikan News but was not received by United Press report; is that true?

A. That is correct; not as I recall it.

Q. What did you say?

A. I say, not as I recall it.

Q. That is not your testimony? It is your testimony then, isn't it?

A. Yes, it is.

Q. I hand you what purports to be a United Press run to the Daily News, Ketchikan, on December 3, and ask you to—excuse me; I have the wrong one—and ask you to note this part marked with a pencil here starting: "Juneau—The Alaska

(Testimony of Gene Brice.)

Fisheries Board and the U. S. Fish and Wildlife Service yesterday told the Federal Power Commission they opposed a dam on the Copper River." And here is a story about the Harvey Aluminum Company building a dam at [203] Cordova. Isn't that the story to which you referred in your testimony on direct examination?

A. It sounds familiar—Harvey Aluminum Company; yes.

Q. Then the same story was carried by the United Press to the Ketchikan Daily News on December 3, 1953, a day earlier than the date complained of.

Mr. Dimond: I would like to mark this for identification. (Handing document to Mr. Faulkner.) I will be through very soon, Mr. Brice.

The Clerk: Is this an exhibit?

Mr. Dimond: I would like to mark it for identification. I intend to admit it through the testimony of Mr. Belnap who will identify it, unless there is objection.

The Court: You mean you don't want to offer it as an exhibit?

Mr. Dimond: I will offer it in evidence.

The Court: Now?

Mr. Dimond: Now. But I thought there might be objection.

The Court: If there is no objection, it may be admitted.

Mr. Faulkner: I don't think there is any objection.

(Testimony of Gene Brice.)

tion. I don't think it refers to exactly the same thing that we introduced.

Mr. Dimond: Well, I don't know where this article [204] is, but, as I recall, he testified there was no article in the News of the Copper River dam project on that date. It is somewhere in this file.

Mr. Faulkner: I think the article we introduced on the Copper River Dam was one with a banner headline that the Governor and the Attorney General had protested the building of this dam and several other articles on the front page of the Chronicle regarding the affect on the fish. Isn't that right?

Mr. Dimond: There were two articles on the Copper River Dam, Mr. Faulkner. The one you refer to was on a different date than on this one, which was on December 4th, as I recall it.

A. One was a banner story, and one was a two-column head on the middle of the page.

Mr. Dimond: Well the article on December 4th was an article "Big Copper River Dam Threatens Red Salmon, Says ADF." I think that is the one that the defendants referred to, one by plaintiff's agent referring to power development on the Copper River. That is what the answer says. And the plaintiff can show that on December 3rd an article regarding the power development on the Copper River was sent by United Press to the Ketchikan News.

The Court: Well, are the parties agreed now

(Testimony of Gene Brice.)

that both of these refer to the same item of [205] news?

Mr. Faulkner: No, I don't agree to that. But there were several articles on the Copper River Dam, and I think it is the way they were handled that we referred to there in the Ketchikan Chronicle. They are different articles. I think they touch on the same thing, but what he says they sent to the News on the day before was a little different from what the Chronicle had the day after.

Mr. Dimond: Well, of course, all we can go by, your Honor, in answer to our interrogatories is what they said here—an article on the Copper River Dam—and that is found in this article.

Mr. Faulkner: I don't object to the introduction.

The Court: It may be admitted. If the jury finds that it is material or important, they may make the comparison and draw the conclusion themselves, if it referred to the same event or occurrence.

The Clerk: This is being marked Plaintiff's Exhibit No. 6.

Q. (By Mr. Dimond): Now, Mr. Brice, in Answer No. 62 on Page 9 the defendants allege that there was not sent by United Press to defendants' paper: "An Associated Press dispatch dated January 8, 1954, regarding reduction in Alaska appropriations." Of course United Press would not send an Associated Press dispatch. But is it your testimony that you did not receive on a United Press report either on January 8, 1954, or a day or two

(Testimony of Gene Brice.)

prior [206] to that an article regarding reduction in Alaska appropriations?

A. I do not recall it, to a comparison of the files.

Q. Well, I think, as I recall, on your direct examination Mr. Faulkner handed you this morning an article from the Ketchikan Chronicle regarding Alaska appropriations in the issue of January 8, 1954, and you testified that that report on appropriations was not sent to you by United Press?

A. Does that concern Alaska Public Works and Road Commission Funds?

Q. It was an article dated January 8, 1954.

A. Yes. Well, that mentions Alaska Public Works and Road Commission Funds.

Q. I hand you the original, what purports to be the original, of the United Press run for Daily News, Ketchikan, January 6th, and referring you to an article marked with a pencil, which says: "The Public Works program authorization expires next year although only some \$41,000,000 of the original \$70,000,000 proposed has been appropriated. The hearing is Feb. 8. A hearing on a bill to increase the limit on lease of school lands" and so on. Isn't that a similar article to the one to which you referred?

A. Well, it is. In that item there are five lines regarding Public Works appropriations, five lines story starts out with [207] the introduction of a bill by Bartlett, and naturally, when I gave that to the printer, my heading would carry the story of in the middle of an entirely different story. That

(Testimony of Gene Brice.)

the introduction of a bill by Bartlett. There is no detail concerning the reduction in appropriations for Alaska.

Q. But you testified that you didn't receive anything from United Press.

A. I didn't receive anything like that from the United Press. You just showed me the five lines, the five lines that we received. We did not have an extended article such as the Associated Press carried.

Q. But you did receive something from United Press? A. You just showed me that.

Mr. Dimond: I would like to offer this in evidence.

The Court: If there is no objection, it may be admitted.

The Clerk: Plaintiff's Exhibit 7.

Q. (By Mr. Dimond): Mr. Brice, I have just one more item for you. You testified on direct examination that the News did not receive from United Press a story which appeared in the Chronicle under date of January 12, 1954, regarding a suicide of a prominent Alaskan named James Barrack. Now, was that your testimony?

A. That was one of the clippings I had.

Q. Well, I hand you what purports to be the original of the [208] 11:00 a.m. United Press run for Ketchikan, January 12th, and show you an article from Seattle regarding the suicide of James Barrack. Isn't that the same subject that you testified on that was not received by you?

(Testimony of Gene Brice.)

A. That is correct.

Mr. Dimond: I would like to offer this in evidence.

The Clerk: Plaintiff's Exhibit 8.

Q. (By Mr. Dimond): There might still have been other instances, Mr. Brice, where there were articles which did not appear in the Ketchikan News, just weren't printed there, and which had been received by them?

A. It is very possible that from time to time an item or two was omitted on a day that was heavy with local news and heavy with advertising.

Mr. Dimond: That is all I have.

Redirect Examination

By Mr. Faulkner:

Q. Mr. Brice, most of the articles you complained of there this morning—there were nearly a hundred—were articles of importance to the readers of the News and important to the people of Alaska?

A. Oh, definitely. They concerned taxes. They concerned Territorial elections. They concerned the reappointment of Territorial officials. As I recall it, the Associated [209] Press carried a story on the reappointment of Governor Gruening as Governor of Alaska, and the United Press did not have that item on that day. I think another item in that regard—the Associated Press carried an item on the reappointment of Judge Folta as Judge for the First

(Testimony of Gene Brice.)

Judicial Division, and the United Press did not carry that item.

Q. And all of these outside of Juneau which are from the special correspondent to the Chronicle which, you say, was sent by the United Press agent, I understand none of those appeared in the United Press service to the News?

A. There may have been one or two, but they were very small items or they were handled in a minor item.

Q. And some of those were items of considerable importance to the people of the Territory?

A. Anything involving taxes, and elections, fishing regulations, are of importance to the people of Alaska.

Mr. Faulkner: I think that is all.

Recross-Examination

By Mr. Dimond:

Q. I have one more question, if counsel please. Do you know, when you were working for the Chronicle, was George Sundborg the stringer for United Press then in Juneau?

A. For United Press? Not to my knowledge. He was a [210] part-time correspondent for the Chronicle.

Q. He was hired by the Chronicle?

A. I would not say that he was hired by the Chronicle; no. He submitted items from Juneau.

Q. To the Chronicle? A. Yes.

Q. And he got paid for those?

(Testimony of Gene Brice.)

A. I assume that.

Q. Since you have been with the Ketchikan News do you have any stringers of correspondents throughout the Territory that submit articles to the Ketchikan News?

A. We subscribed to the United Press when I first went to the Daily News, and the United Press had claimed that it had correspondents in all the major cities of Alaska. We now take the Associated Press, and the Associated Press claims they have correspondents in the major cities of Alaska.

Q. You don't have any special correspondents of your own, say, in Juneau? A. No.

Q. Do you ever get news articles and reports from Juneau, not from Associated Press but from newspapermen, say?

A. If something occurs in Juneau, I simply sit down at the teletype and ask the Juneau Empire if it has any information on that. [211]

Q. When you were with the Chronicle you know that George Sundborg in Juneau submitted articles to the Chronicle?

A. I do not know what articles he submitted. I know that he discussed it with Baker, who is the editor of the Chronicle, and Baker had mentioned to me a couple of times that George Sundborg would be writing for him.

Q. And at that time you were also receiving Associated Press reports ninety minutes a day, weren't you? A. That is correct.

Mr. Dimond: That is all.

(Testimony of Gene Brice.)

Redirect Examination

By Mr. Faulkner:

Q. Mr. Brice, you talked about these correspondents. How does the Associated Press handle the news in Juneau when the Legislature is in session?

A. The Associated Press this year had a teletype set up right in the legislative building, and Jim Hutcheson, a veteran legislative correspondent, covered the session of the Legislature, and he had a teletype which was on a circuit with twenty-two other teletypes in Alaska.

Q. Now, he has done that for a number of years, has he?

A. Hutcheson has covered the Legislature for several years.

Q. Did the United Press ever have such service up there?

A. Nothing in comparison with the Associated Press. [212]

Q. Well, did they have any?

A. We made arrangements at one time with Bob DeArmond when he was in Juneau to secure information on the Legislature through him.

Q. Yes; but that was your own arrangement, wasn't it? A. That is correct.

Q. That wasn't the United Press arrangement?

A. No, that was not.

Q. So you had to make your own arrangement there? A. That is correct.

Mr. Faulkner: That is all.

(Testimony of Gene Brice.)

Recross Examination

By Mr. Dimond:

Q. As long as we are on this other subject I would like to ask one more question. Didn't you have to pay something additional for that special legislative report from Hutcheson? A. Yes.

Q. How much more did you pay for that news?

A. I don't recall just what the figure was. That was handled through the business office.

Q. Could it have been around two hundred dollars a month or thereabouts?

A. No. I have a faint recollection that it was around [213] eighty-five or eighty-six. I really don't know. That was handled by the business office.

Mr. Dimond: That is all.

(Witness excused.)

The Court: I would like to inquire how the evidence shows that this contract was extended to 1962. I can't fathom that from the evidence.

Mr. Faulkner: I can't either.

Mr. Dimond: I can explain it, your Honor. The service under the contract started on October 3, 1945, and the printed provisions of the contract stated that, irrespective of the date appearing on the contract, the effective date that would govern was the starting time of the contract and that was October 3, 1945.

Now, Paragraph 8 set the initial term of the con-

tract as three years, so there was an extension. The first term of the contract was October 3, 1945, to October 3, 1948. Now, since we contend that no notice of termination was given six months prior to October 3, 1948, the contract was extended by the terms for another five years, which would have brought it up to October 3, 1953, and we also contend that, since no notice of termination was given sixty days prior to October 3, 1953, that—

The Court: Where do you get the sixty days?

Mr. Dimond: Six months. Excuse me, your Honor. [214] Since no notice was given of termination on April 3, 1953, which is six months prior to October 3, 1953—

The Court: Well, but what about the effect of this modification agreement of February 21, 1950?

Mr. Dimond: Well, I am getting to that in a minute. I am trying to make this chronological. The contract was extended from 1953 for five years, until 1958. Now, under the terms of the modification of the agreement entered on February 21, 1950, it was provided that the term of the basic contract would be extended by the length of time that that modification was in effect and that modification permitted either party to give notice of termination, and, if either party—

The Court: I understand all that but I just don't see how you attach this modification contract onto a later extension period. It seems to me that, when you look at this modification agreement, it refers to the current period which would expire in 1953 and that it would extend that period and not the period beginning in 1958.

Mr. Dimond: I would assume it would extend the period at the time the termination of the modification was made, which was February 14, 1954. That is the first time that modification came into effect, that is, the extension of time.

The Court: Well, but that assumes that the current [215] period ending——

Mr. Dimond: February 14, 1954. The expiration date was 1958.

The Court: Yes; provided that there had been a renewal in 1953.

Mr. Dimond: Yes.

The Court: But it seems to me that the renewal was delayed by this modification agreement.

Mr. Dimond: I couldn't see that, your Honor. I thought that the modification of the agreement was that this rate was suspended during this period of time from February 21, 1950, until notice of termination was made on February 14, 1954, and as soon as that notice was given——

The Court: But what did it extend? That is what seems to me the question is. It couldn't have extended a period that hadn't come into being yet. If it extended anything, it would extend the current period.

Mr. Dimond: But the expiration time of the contract in 1954 had been extended by failure to give notice of termination.

The Court: Well, I understand your position, but I can't understand how this modification agreement of February 21, 1950, could, so far as extend-

ing it is concerned, extend anything except the current period, not some future period.

Mr. Dimond: The modification says the term of the [216] agreement between the parties shall be extended by the length of time during which the suspension is in effect. The term of the agreement you get from Paragraph 8 and the facts of the contract. The term of the agreement ended for 1954 in 1958, had been extended already, and, therefore, when this was terminated, it extended it another four years.

The Court: I can't follow that reasoning; I mean, I can follow it, but I certainly can't believe that it—

Mr. Faulkner: I can't follow it either, your Honor, and I have gone on the assumption that that could not be the result of that modification.

The Court: I can't see how it is.

Mr. Faulkner: Where is the contract? The contract is not for fifteen years or ten years or twenty years. The contract runs for three years and then five-year periods unless you give notice. Now, that five-year period, the first one expired in October, 1953. Now, prior to that time, in February, 1950, they bring in this modification and they say the period is extended four years. Well, what period? Why, the then period. They couldn't jump over that and extend another period. They might as well jump to 1970 or 1977. I can't see the language in that that would justify that. This period, the period, now, was to expire in October, 1953. Now, they say they extended that four years. They extended

that during the period this thing is in operation, and Mr. Belnap [217] says that was four years, so, therefore, it would be from October 3, 1953, to October 3, 1957. That is as far as they could go. That is the deadline. But I don't see how in the world they could ever reason that it was 1962.

The Court: Well, it is a question that, of course, I will have to answer before preparing the instructions. That is why I made the inquiry now.

Whereupon Court recessed until 2:00 o'clock p.m., April 14, 1955, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:

The Court: I think perhaps for the guidance of the parties I should announce that I have come to the conclusion that, since a contract cannot be suspended and also run at the same time, I have got to limit the period for which any recovery could be had by the plaintiff, if the plaintiff is entitled to recovery, to the period ending September 27, 1957. You may call your next witness. [218]

* * *

Plaintiff's Rebuttal

DAVID F. BELNAP

called as a witness on behalf of the plaintiff, having previously been duly sworn, testified as follows:

Direct Examination

By Mr. Dimond:

Q. Mr. Belnap, I believe you testified on direct examination that you have about four thousand clients, United Press does?

A. Four thousand four hundred, approximately.

Q. And the assessments made on account of wage labor agreement increases are the same all over, are they not?

A. That is right; the percentage is the same against the rate of the client.

Q. And this increase in assessments is different from the actual salary of the Seattle operator; is that correct?

A. That is correct. The salary of the Seattle operator, which the defendant agreed to pay, was fixed at a certain amount by mutual agreement. The assessments under Sub-paragraph 2, Article Second of the Agreement, were levied against this client as well as against all the rest of the clients, and they applied to the operators' increases as a whole. I might explain that this way, that, when the United Press negotiates with the Commercial Telegraphers Union and an increase is negotiated in their salaries, all of their salaries, the salary of the [219]

(Testimony of David F. Belnap.)

Seattle operator as well as the salaries of the operators in other cities like San Francisco, Washington, D. C., New York, New Orleans, Chicago, Denver, Salt Lake City. The total increase, the total increase in overhead through that increase in salary to these operators is passed along to our clients in the form of a percentage assessment against their rates, and these assessments would have been levied against the Ketchikan News whether or not it had been necessary for us to employ a specific operator in Seattle to transmit the file to the Ketchikan News.

Q. Is it customary for a person in your position, as an official with a news gathering service, such as United Press, to be familiar with the circulation figures and have access—

A. Yes, it is.

Q. —to the circulation figures of newspapers that you serve?

A. That is correct.

Q. And also of your newspaper competitors?

A. That is correct.

Q. Have you made any comparison from any source of the circulation figures of the Ketchikan Daily News as compared with those of the Chronicle?

A. Well, I have looked up the circulation figures of the [220] two papers in the "Editor and Publisher Year Book"; yes.

Q. What is that?

A. The "Editor and Publisher Year Book" is a standard directory of newspapers in the United States, its territories and Canada, which is published every year in January by the Editor and Publisher

(Testimony of David F. Belnap.)

Publishing Company. That is a company which publishes a newspaper trade publication every week. The directory contains the names of all the daily newspapers in the United States, its territories and Canada, together with certain information about those papers supplied by the papers themselves, the names of the executives of the papers, the names of the publishing company in each case, the advertising rate for the paper, the circulation for the paper, the wire service which serves the paper, and information of that nature, statistical information.

Q. Based upon your research in this respect what have you found as to the comparative circulation of the Ketchikan Chronicle and the Ketchikan Daily News during the period, say, 1949 to the end of 1953?

A. The figures in "Editor and Publisher Year Book" for those years show that the Ketchikan Daily News had a regular, steady rise in circulation rate, or in circulation figures, rather, in average daily circulation, and that in about 1951, having previously had, according to that [221] book, fewer average daily circulation than the Ketchikan Chronicle, in 1951 surpassed the Ketchikan Chronicle and continued to surpass the Chronicle and up until the present day, I suppose.

Q. The Ketchikan News was being serviced by the United Press during those years?

A. Yes, it was.

Q. During the course of handling and supervising transmissions, which you testified you had some

(Testimony of David F. Belnap.)

experience in for several years, did you ever have occasion to hear from newspapers which were being serviced by United Press as to the type of news they wanted and the type they did not want?

Mr. Faulkner: Now, if the Court please, I object to that. The type of news is what Alaskan newspapers want. Mr. Charles' testimony is that he wrote and told them, and Mr. Bowerman in his deposition states the priority of the different classes of news.

The Court: Will the reporter read the question?

The Reporter: "During the course of handling and supervising transmissions, which you testified you had some experience in for several years, did you ever have occasion to hear from newspapers which were being serviced by United Press as to the type of news they wanted and the type they did not want?" [222]

Mr. Dimond: If the Court please, the defense of the defendants here is that an adequate news report, as they conclude the regular news report was made in contrast, was not furnished, and they give as examples of that certain instances where articles, they say, were not sent by United Press and not included in defendants' paper, and I think it can be shown as a matter of editorial judgment as to whether a particular item on a certain day was worthy of being included in a 3,500-word transmission. Mr. Belnap has had experience in those things. This is a preliminary question. I want to eventually ask him what his editorial judgment would be on transmitting a

(Testimony of David F. Belnap.)

number of items which the defendants in these newspaper clippings in answer to our interrogatories gave as instances of what they call news of great importance to Alaska and the readers of defendants' paper which were not published, and I think he is certainly qualified—he has already testified as to his experience—he is qualified to give his opinion as to whether these items were of great importance or not.

The Court: There isn't any question about that, but that isn't the objection. The objection is that you are seeking to elicit from this witness the opinion of other newspapers, and, of course, over objection that kind of evidence can't be——

Mr. Dimond: I will restrict the question to newspapers in Alaska. [223]

The Court: It wouldn't change the complexion of the objection or the question either. In other words, here is an attempt to put in, you might say, hearsay testimony, that is, evidence consisting of what other newspapers are said to have reported to him, and, while the Court would permit it and the jury could give it such weight as it saw fit to give it if there were no objection, over the objection I can't admit it.

Q. (By Mr. Dimond): Well, Mr. Belnap, have you read and considered the items mentioned in the defendants' answers to the plaintiff's interrogatories where they cite specific instances that they claim that news items of great importance were not included in the file to the Ketchikan Daily News?

A. Yes; I have read all of the answers.

(Testimony of David F. Belnap.)

Q. You were here this morning when Mr. Brice testified specifically as to some of those items?

A. Yes, I was.

Q. Which were introduced in evidence as defendants' exhibits here? A. Yes, sir.

Q. Now, one of those items, in answer No. 8 of the answers to the interrogatories, dealt with the death of a Coast Guard enlisted man. Would you say that in your experience that in the case of transmission of teletype service [224] to the Ketchikan Daily News for one hour a day that an item concerning the death of a Coast Guard enlisted man would ordinarily be included?

A. Well, it would depend to a large extent on who the Coast Guard enlisted man was. If the Coast Guard enlisted man was Clark Gable, yes, it would be included. If the Coast Guard enlisted man was Joe Smith of Keokuk, Iowa, why, it would have been a waste of Mr. Charles' transmission time in transmitting that. And it would depend too largely on the rest of the news of the day. He might be someone other than Joe Smith of Keokuk, Iowa. He might be a college professor who was in the Coast Guard on a tour of duty and during that tour of duty he was drowned. It would depend on the specific story, and there isn't enough information just in a line saying "Death of a Coast Guard enlisted man by drowning" to be able to tell just exactly whether that was a news item of great im-

(Testimony of David F. Belnap.)

portance or not. I would say that, if that is as well as it can be described there, it probably wasn't.

Q. Would that be true of some of the other answers too?

A. Yes; that is right. All of the answers were quite vague, and it was certainly difficult to see just exactly what they were referring to.

Q. What do you use as a basis for the transmission, the news that should be included in a one-hour transmission? [225]

A. Well, it depends on the news that is happening in the world that day. It depends on whether president so-and-so of France has been assassinated. That is a big story. It depends on whether you have the Korean War going on. That is a big and important story, a story in which the readers of Alaska are interested. If you have to choose between the death of a Coast Guard enlisted man and the current situation in the Korean War, no, you wouldn't include the death of the Coast Guard enlisted man.

Additionally, you have to take into account certain classes of news. For instance, we were required to file to Mr. Charles a minimum budget of sports which required a certain period or portion of that one-hour, thirty-five-hundred-word transmission—baseball scores, results of fights, heavyweight fights, and the results of other top sporting events. It was necessary to furnish to Mr. Charles in that file reports on the doings of Congress in Washington. That is important. It is necessary, to publish a bal-

(Testimony of David F. Belnap.)

anced newspaper, to have sports and to have reports on Congress and to have reports on the Korean War and to have reports on the important things that are happening around the world, things that are affecting us right here in the United States, about the cold war and about Russia.

News, again, as I say, is relative. It is [226] different every day, actually. A story that today might be quite important tomorrow isn't, because there is so much more news of more importance and of more significance that the other previous day's top story is paled by comparison and, as a consequence doesn't merit the same consideration and is a matter on which a decision must be made every day.

Q. Mr. Belnap, did you observe during Mr. Brice's testimony and from reading the defendants' answers to plaintiff's interrogatories of October 2, 1954, relating to the items of defective news service, that several, if not many, of the items related to stories sent by what was called the United Press representative in Juneau?

A. Yes, sir; I noted that.

Q. Who was George Sundborg at that time?

A. Who was at that time George Sundborg.

Q. What were his duties with respect to United Press?

A. George Sundborg's duties with respect to the United Press were to furnish us at Seattle by telegraph, as a rule, news items from Juneau, Alaska, of general interest.

Q. What do you mean—"of general interest"?

(Testimony of David F. Belnap.)

A. I mean news items which we can use on our wires, news items that are worthy of being included on our wires, and George Sundborg, I might say, did supply us with news items of that nature, and they were carried on our wires, [227] including the wire to the Ketchikan Daily News.

Q. Was that supposed to include all the local items that might be of local interest to a Ketchikan newspaper? A. No.

Q. Why not?

A. Well, for one thing, the file to the Ketchikan Daily News wouldn't have encompassed the size of the file that Mr. Sundborg was turning into the Ketchikan Chronicle as a special correspondent for the Chronicle. It would have been out of balance.

Q. Was there any agreement ever made between you and the United Press and the Ketchikan Daily News to furnish a special local news service such as Sundborg might have been furnishing the Chronicle? A. No.

Q. Mr. Belnap, I hand you what purports to be a copy of a letter from the Ketchikan Daily News, dated April 8, 1946, addressed to Pierre A. Miner, United Press Associations, New York City, and signed by Sid D. Charles. Can you identify this letter and tell me where you have seen it before, if you have seen it?

A. Yes. This letter is from the Seattle correspondence files.

Q. Are you in charge of and do you have custody of those files? A. Yes, I do. [228]

(Testimony of David F. Belnap.)

Q. And you picked this letter out of those files?

A. I picked this letter out of our files in Seattle.

Mr. Dimond: If the Court please, I have several letters here that I wish Mr. Belnap to identify, of which some parts are not particularly relevant, but each of them contains some expression of satisfaction of the service, from the News to the United Press Association, which I think is material in view of the defense.

The Court: Well, what is it you wish to have done now?

Mr. Dimond: Well, I would like to introduce all of these letters. I just don't know whether to have them identified separately or show them to counsel first.

The Court: No, you don't need to have them identified. You can show them to counsel.

(Mr. Dimond handed documents to Mr. Faulkner.)

Mr. Dimond: They are dated from April 8, 1946, to April 16, 1949. I would like to offer these letters in evidence.

The Court: They may be admitted.

The Clerk: As a group?

Mr. Dimond: Yes.

The Clerk: This will be Plaintiff's Exhibit 9.

Mr. Dimond: If the Court please, ladies and gentlemen of the jury, I don't intend to read these letters in full [229] now, but each of these letters

(Testimony of David F. Belnap.)

dated from April 8, 1946, to April 16, 1949, signed by Sid Charles of the Ketchikan News, in one or two paragraphs contains expressions of satisfaction with the type of service that United Press was rendering at that time, and, rather than burdening you with reading them in full, I shall merely keep them here as an exhibit which you will have a chance to refer to later on. That is all I have, Mr. Belnap.

Cross-Examination

By Mr. Faulkner:

Q. Mr. Belnap, there were some instances where there was quite important news developed in Alaska and in the transmission was not sent by United Press, weren't there?

A. There may have been instances; yes; I mean, Mr. Brice testified that there were; I don't admit that there were.

Q. And Mr. Sundborg's news sent down from Juneau that you saw this morning or heard of was quite important, wasn't it, locally?

A. Well, I—it would be hard to say. I mean, I am of course using, as I think about it, I am measuring the item against the possible other world news developments that day and taking into account at the same time the limitations of the 3,500-word file, and so it is a relative matter. It is a consideration of each individual item. [230] If I knew what news there was everywhere for that day, I could probably give you my opinion on it.

(Testimony of David F. Belnap.)

Q. But news of matters of taxation and employment security, appointment of important government officials, and water power development, all those things are news of first importance to a Ketchikan paper, aren't they?

A. Well, I just wouldn't be qualified to say.

Q. Now, you heard the answers that the plaintiff United Press made to interrogatories that I presented, which I read this morning, in which they said they had correspondents in practically every town from Ketchikan to Kotzebue. What were those correspondents doing, do you know?

A. You mean, how were they employed in each individual—

Q. What were they furnishing in the way of news?

A. Well, each of those correspondents—now, I can't—do you want their names?

Q. No; we don't need their names.

A. Each of those correspondents had a responsibility. Each of those correspondents had been instructed by us to furnish us with news of general interest in their territory, and of course we had to rely upon their judgment to a large degree whether the news was of general interest and when to file it, since we weren't right on the scene and couldn't say, "Well, this news has just happened. Please send it to us." [231]

Q. Could you point out anywhere in these news items, or in the service that the Associated Press

(Testimony of David F. Belnap.)

gave to the Ketchikan News, any items coming from any of those places?

A. Oh, if I had the complete file of our transmissions to the Ketchikan Chronicle, or Ketchikan News, with me here, yes, I could point out several items every day that were received, or a number of items a week that were sent.

Q. Mr. Belnap, you saw, you have heard, read or saw the item in the Ketchikan Chronicle which I introduced this morning, the Chronicle dated July 2, 1952, referring to General MacArthur's speech at the Republican National Convention, which the Ketchikan News did not carry?

A. Yes; I heard that.

Q. You didn't find any record of the transmission of that item to the Ketchikan News, did you?

A. No, sir.

Q. Now, I have here a file mentioned this morning, something about whether you carried these things; I have a file of the Ketchikan Daily News from June 30th on—July 1st, July 2nd, July 3rd—which would cover that entire period. Now, would you like to look those over to see if there is any mention of General MacArthur?

A. I will be delighted to take your word, sir, that there is not any mention in there.

Mr. Faulkner: I would like to offer these [232] in evidence to clear up that point.

Mr. Dimond: What year is that?

Mr. Faulkner: Well, it was 1952. We introduced the Chronicle this morning to show the large item

(Testimony of David F. Belnap.)

about General MacArthur making the keynote speech, and Mr. Brice said that was not sent to the News. Now, we have the copies of the News here, and I will offer them in evidence, if the jury wants to look for it, as Defendants' Exhibit—whatever it is.

The Clerk: Exhibit I.

Q. (By Mr. Faulkner): Mr. Belnap, just one other question. You said you have looked at the "Editor and Publisher" for the years 1949 to 1953 and you found that the circulation of the Ketchikan News increased from 1951 on; is that true?

A. The circulation of the Ketchikan News is not reported in "Editor and Publisher" for the years 1945 through 1947. I think that the first time that the Ketchikan News circulation was listed in the "Editor and Publisher" was in the year book issue of January, 1949, the figure being the average daily figure for the year 1948, and from that date on there is each year in the year book carried an average daily circulation figure for the Ketchikan News. Those figures show an increase each year from the previous year. [233]

Q. From what year? A. From 1948.

Q. 1948?

A. Yes, sir; in the 1949 through 1954 year books.

Q. I thought you said it increased from 1951.

A. What I said, sir, was that in the year 1951, apparently, the Ketchikan News surpassed its competitor the Chronicle in average daily circulation.

(Testimony of David F. Belnap.)

Q. And continued to surpass them. Now, those figures for the circulation are set up by the News in answer to an interrogatory. I don't think I read it, but it is in answer to an interrogatory.

A. That is correct; and the figures listed in your answers to our interrogatories both correspond to the same figures in the "Editor and Publisher" every year except 1948.

Q. Now, when the News began to pick up in circulation, did you ever notice that that corresponded with the coming of the pulp mill in Ketchikan, the increased activity here?

A. I hadn't connected the two; no, sir.

Mr. Faulkner: That is all, Mr. Belnap.

Mr. Dimond: That is all. [234]

* * *

The Court: Perhaps I should announce that I find against the defendants so far as their first affirmative [239] defense is concerned and also the third affirmative defense. You may proceed then with the argument.

Mr. Faulkner: We will ask an exception to the Court's ruling on that finding.

(Whereupon respective counsel made their arguments to the jury; and thereafter respective counsel were furnished copies of the Court's Instructions to the Jury, and the Court read his Instructions to the Jury; and the following occurred:)

The Court: Are there any exceptions?

Mr. Dimond: I have one exception, your Honor.

(Whereupon respective counsel and the court reporter approached the bench, out of the hearing of the jury, and the following occurred:)

Mr. Dimond: I just want to take exception to part of Instruction No. 4 which instructs the jury to the effect that the term of the contract would expire September 27, 1957, rather than September 27, 1962.

Mr. Faulkner: I would except to the failure of the Court to instruct the jury, if any damages are recovered, they must be limited to the difference between \$38.17 and \$8.66 a week.

(Whereupon respective counsel and the court reporter withdrew from the bench and were again within the hearing of the jury; the bailiffs were duly sworn to the charge of the jury, and the jury retired to the jury room at 4:45 o'clock [240] p.m. in charge of the bailiffs to deliberate upon a verdict.)

(Thereafter, on the 21st day of April, 1955, at 4:00 o'clock p.m., at Juneau, Alaska, the above-entitled cause came on for further hearing; the Honorable George W. Folta, United States District Judge, presiding; the plaintiff appearing by John H. Dimond, its attorney; the defendants appearing by H. L. Faulkner, their attorney; and the following proceedings were had:)

Mr. Faulkner: If the Court please, in this case we each have a judgment to submit. I have one

prepared. I didn't file it. I served a copy on Mr. Dimond, and he served a copy of his on me, so I will give it to the Court.

The Clerk: Is yours in the file, sir?

Mr. Dimond: I don't know whether I wish to submit it until I have a chance to argue this matter.

Mr. Faulkner: Do you want to argue it?

Mr. Dimond: If the Court please, I would like to explain that I have prepared a form of judgment, which I served on counsel, which is essentially the same as his except that in mine plaintiff requests that costs and attorney's fees be allowed to the plaintiff rather than the defendants, and the judgment recites that the action having been tried and a general verdict for plaintiff duly rendered and so on.

This afternoon, giving this thing a little [241] more thought, I thought to myself that I probably should not present this form of judgment because it is not the form that I think the plaintiff ought to submit, and that leads me up to a request—I don't intend to take counsel by surprise here; I just wanted to mention this to be brought up later—a request that the Court enter its own findings of fact and conclusions of law in this case and direct that an appropriate judgment be entered which would recite the fact that the jury was merely advisory, and the Court, whatever decision it made, would make its own findings and conclusions.

I base this request upon the contention of plaintiff that it was error to call a jury trial over objec-

tions and on the Court's own motion. I don't intend to argue that at this time, but the reason I mention it at this time is the fact that I intend to file on behalf of plaintiff a motion for a new trial, in a day or two, and I am going to incorporate in that motion a request that the Court open and set aside whatever judgment it enters at this time and make its own findings and conclusions of law and direct the entry of its own judgment, and for the reasons that I have stated, inasmuch as that question will probably be argued and I want to give counsel a chance to prepare himself on the argument, I don't intend to argue it at this time. The only reason I mention it again is the fact that Rule 26 of the Local Rules requires counsel for the successful party to present within two days [242] after the Court's determination of a matter proposed findings and conclusions, and I request that this rule be waived in this case in view of the fact that it would be fruitless for me at this time to present findings for the Court's entry until we have had a chance to argue this question as to whether or not the Court should make its findings. The contention I am making, which I will be prepared to argue at the time we argue the motion for a new trial, is that under Rule 52 the Court is obligated to make its own findings and conclusions and judgment by reason of the fact that this jury was advisory only, and I don't know how binding this rule is as far as the two-day rule is concerned. I would like to argue this matter of the findings and conclusions next week sometime. I have not prepared any to submit to the Court:

The Court: Well, I am just wondering whether you should argue them at all. You may of course argue any motion for a new trial, but the reason I think it would be futile to argue that the jury may be treated as advisory is because, if I am not mistaken, the law doesn't provide for an advisory jury except in actions of an equitable nature. There is no authority whatever for empanelling an advisory jury except in an equity action.

Mr. Dimond: I would have to do a little more research on that, your Honor.

The Court: Well, I am sure of that, because there [243] have been times when I would like to have had an advisory jury in a law case.

Mr. Dimond: Well, I have one case that I cited in court in *Ketchikan* on this point, but I would like to check it again to see whether it is applicable. But on this question of costs here Rule 54(d) provides that costs shall be allowed of course to the prevailing party unless the Court otherwise directs. In general I think the party in whose favor a judgment is rendered is the prevailing party, and, although plaintiff may not obtain all the damages which he seeks, if the verdict is in his favor, or any damages, even though it is offset by the exact amount in the counterclaim. I think and I submit that he is the prevailing party and, therefore, entitled to costs and attorney's fees under the Rules of the Court. There is very little to say on it except that we submit the plaintiff is the prevailing party.

The Court: Well, but is there no authority on a situation of this kind?

Mr. Dimond: Well, there is authority in Moore's Federal Practice—I don't have the exact citation; I have it but I can't find it now—under his discussion of what is a prevailing party under Rule 54(d), and I would like to refer the Court to one case, a Circuit Court case, found in 35 F.2d at Page 211. The name of plaintiff is Harlan Coal Company, and I didn't get the name of the defendant down. I did this [244] rather hastily. So I submit on the basis of, just on the plain wording of the Rule, and on what Mr. Moore says about it on this case, that plaintiff is entitled to costs and attorney's fees.

Mr. Faulkner: If the Court please, first, on the matter of the advisory jury, if that is before the Court, I just want to say this. I have thought about that myself in connection with this case. There is no provision for an advisory jury in a lawsuit, and, if there had been and this had been an advisory jury, the trial would have taken on a different complexion because the Court would have then submitted to the jury certain questions and certain findings for them to make, and I believe it would have been much easier for the defendant if that had been done, but that is not the way you do in a lawsuit. The jury was empanelled and tried the issues raised by the pleadings, and the pleadings on behalf of the plaintiff claim damages in the sum of \$21,000.00. The question for the jury was whether or not the plaintiff was entitled to the damages or whether or not the defendant was entitled to the counterclaim.

Now, the rule on that—I suppose the Court is familiar with it—but the Rule 54(d) says that the costs are allowed to the prevailing party unless the Court otherwise directs. Now, for that reason, because of that clause in the rule, I think you will find very few court decisions defining who is [245] the prevailing party, because the Court tries the case and it is naturally in the discretion of the Court as to who shall have the costs.

Now, I do find though an authority here. I have prepared a little memorandum on this which I will give to the Court to save time.

In the case of *B. B. Chemical Co. v. Cataract Chemical Co.*, 2 F.R.D. 159, the District Court for the Northern District of New York held that the Court had discretion as to awarding costs on counterclaim where the defendant prevailed in the main action, even though the plaintiff prevailed on a counterclaim. It is kind of a reverse situation here.

There are numerous cases cited in 28 USCA on Rules of Civil Procedure, under Rule 54, and in *Barron & Holtzoff*.

Now, let's see what was done in this case. The plaintiff sued for \$21,000.00 The defendant came in and claimed that there was nothing due the plaintiff and set up a counterclaim. Now, I think the Court will remember from the evidence as it was introduced and from the pleadings that this counterclaim was known to the plaintiff at the time it brought the suit. It was for money which it had

drawn after the contract was terminated on drafts of the defendant for the period of, I think, six weeks. Well, if they didn't know it or had overlooked it, we called it to their attention by setting up the counterclaim, and even then they didn't admit that this [246] counterclaim was due the defendants. They skirted around it by saying they didn't owe the defendants anything, so I think it is the effect of a general denial, and, when we confronted them with the drafts, of course, then they admitted that the counterclaim was due, and, being due, it should have been deducted from the amount they sued on.

Now, what did the jury do? They went out and they found a verdict which sounds rather puzzling, but the way the Court submitted it to them I can see just what happened, that they were told to find a verdict, if they found for the plaintiff, in the sum of blank dollars less the sum of the counterclaim, which was \$368.70, so the jury, I suppose, felt that they couldn't very well fill in nothing in that blank space and deduct \$368.70 from nothing, so they filled in the same amount, thereby giving the plaintiff nothing. Now, it is true that they offset the counterclaim some way or other. I don't know just how they reasoned it, but I think it was the form of verdict that perhaps misled them a little bit. I didn't notice it, and I know the Court didn't notice it until it came in from the jury.

Now, surely, the defendant is the prevailing party in this case. Here the plaintiff sues for a large sum and gets nothing. We didn't sue them for the

counterclaim. We just set it up, the counterclaim, in this suit when they sued us for \$21,000.00. I think it would be pretty farfetched to [247] hold now that the plaintiff is the prevailing party. They sued us, and the case was fairly tried and submitted to a jury, and the jury found, while they found that they were entitled—there was no logic or no reason or nothing on which they could base that verdict of \$368.70, except to offset the counterclaim, and what they apparently intended to do was give the plaintiff nothing and the defendant nothing, which was satisfactory and which was the result of the case.

Now, as I say, these authorities, I think the Court will find, wherever you look, I think, will not go into that to any extent because of that provision in the rule which makes it at all times in the discretion of the Court. Now, here is a case that I did find, 176 F. 2d 1, Chicago Sugar Co. v. American Sugar Refining Co., which discusses somewhat briefly the matter of costs. It says: "As we understand it, the denial of costs to the prevailing party"—now, even if they were the prevailing party, there would be a reason for denying costs—"the denial of costs to the prevailing party or the assessment of partial costs against him is in the nature of a penalty for some defection on his part in the course of the litigation as, for example, by calling unnecessary witnesses, bringing in unnecessary issues or otherwise encumbering the record, or by delaying in raising objection fatal to the plaintiff's case." He cites a large number of cases there. "A party, al-

though prevailing, would be denied [248] costs for needlessly bringing or prolonging litigation.”

I think that same reason would apply to this case even if technically, because of the jury’s insertion of that small amount there, which is offset by our counterclaim, even if technically they could say that the plaintiff still is the prevailing party, and, while they did not call any unnecessary witnesses or didn’t prolong the trial unnecessarily, none of those things happened, but they did sue the defendant for a large sum of money and brought them into court to defend when we showed, I think, to the perfect satisfaction of the jury that the contract which they had had been violated on their part; so, if the Court could possibly hold that the plaintiff is the prevailing party in this case, why, I am sure in the exercise of discretion the Court would almost have to hold that the defendant is entitled to costs. Now, our costs is not very much. They are only twenty dollars with the exception of attorney’s fees, whatever the attorney’s fees might be, and that, of course, would be left to the discretion of the Court.

I will give you this memorandum, Judge, and I will give Mr. Dimond a copy.

Mr. Dimond: If the Court please, briefly, I would like to dispose of this reiteration to the counterclaim all the time. The plaintiff admitted all the allegations of the counterclaim, and that was settled, and the Court instructed [249] the jury to that effect, so that should not be brought into this issue at all.

There aren’t too many cases on this subject. The

case that I cited to the Court is a case where the defendant recovered more on his counterclaim than the plaintiff recovered in the verdict for the plaintiff and the Court held there that the defendant was the prevailing party, and that seems reasonable; if the defendant gets more than plaintiff, he is the prevailing party. But we have a draw here as far as the damages are concerned. I suppose the only thing to look at is that the scales are tipped a little bit toward the plaintiff's side because he got a verdict. In other words, the jury found a breach of contract on the part of the defendant. They didn't want to award any damages to the plaintiff, but they did find a breach of contract, and in that respect the plaintiff did prevail. It prevailed certainly more than the defendant did.

Now, the discretion of the Court, of course, states an equitable principle. The Court can do pretty much what it pleases here. If it thinks in equity that the costs should be divided up or should be awarded one way or the other, I suppose this is a matter of discretion and seldom can be interfered with on review. But I would like to urge the Court in that regard in its discretion to consider the plaintiff as the prevailing party even though it came out of this case [250] with no damages in dollars and cents because it was the prevailing party in the sense that it won the case. It sustained its allegations in the complaint that there had been a breach of contract and sustained its defense to the defense of the defendants that it had in turn breached its own contract. The jury apparently found that plain

tiffs had performed their contract satisfactorily and that defendants had not.

The Court: Well, I don't know how the jury could have been confused by the forms of verdict if they read the instructions. I don't know how I could have made it any different. I instructed them that, if they found for the plaintiff, they would have to deduct \$368.70 because it was admitted that the defendants had that coming on their counterclaim, and I instructed them that, if they found the converse, they would return a verdict for the defendants. It is obvious that what the jury wanted to do is not allow either party anything, and it seems to me we have got to disregard the form of their verdict and view it as merely a device to award nothing to either party, and, viewing it that way, then who is the prevailing party?

Mr. Dimond: Well, if you view it that way, your Honor, I suppose that each party would have to pay its own costs, but I don't want to consent to that.

The Court: Well, I am inclined to think that each party should pay its own costs. I have felt that way from the [251] time that the verdict was returned and noting that it was merely a device to avoid awarding anything to either party, so it will be the order of the Court that each party will pay its own costs.

(End of Record.) [252]

Reporter's Certificate

United States of America,
Territory of Alaska—ss.

I, Mildred K. Maynard, Official Court Reporter for the herinabove-entitled Court, do hereby certify:

That as such Official Court Reporter I reported the above-entitled cause, viz., United Press Associations, a corporation, vs. Sidney Dean Charles, Paul S. Charles, Patricia Charles, and the Pioneer Printing Company, a corporation, No. 7031-A of the file of said court;

That I reported said cause in shorthand and myself transcribed said shorthand notes and reduced the same to typewriting;

That the foregoing pages, numbered 1 to 252, both inclusive, contained a full, true and correct transcript of all the testimony and proceedings at the trial of the above-entitled cause, to the best of my ability.

Witness, my signature this 11th day of August 1955.

/s/ MILDRED K. MAYNARD,
Official Court Reporter.

[Endorsed]: Filed August 11, 1955. [253]

PLAINTIFF'S EXHIBIT No. 1

In the District Court for the District of Alaska,
Division Number One, at Juneau
Civil Action No. 7031-A

UNITED PRESS ASSOCIATIONS,

Plaintiff,

vs.

SIDNEY DEAN CHARLES, PAUL S. CHARLES
and PATRICIA CHARLES, and the PIONEER PRINTING COMPANY, a Corporation,

Defendants.

PLAINTIFF'S REQUEST FOR ADMISSIONS

August 18, 1954

Plaintiff requests defendants, within ten days after service of this request, to make the following admissions for the purpose of this action only, and subject to all pertinent objections as to admissibility which may be interposed at the trial:

1. That a copy of a letter dated August 9, 1945, addressed to Sidney D. Charles, Ketchikan, Alaska, and signed by Edwin Moss Williams, is a true and genuine copy of the original letter bearing the same date and that it was received by defendants, or any of them in due course.

2. That a copy of a letter dated June 30, 1945, addressed to Mr. Sidney D. Charles, Ketchikan,

Alaska, signed by Murray M. Moler, and bearing the signature of Sid. D. Charles under the words "Accepted by" in the lower left-hand corner of said letter, is a true and genuine copy of the original letter bearing the same date, that it was received by defendants, or any of them, in due course, and that it was "accepted by" the defendant, Sidney D. Charles.

3. That a copy of a letter dated September 4, 1945, addressed to Mr. Sid D. Charles, Ketchikan, Alaska, and signed by Dan Bowerman, is a true and genuine copy of the original letter bearing the same date and that it was received by defendants, or any of them, in due course.

4. That a copy of the letter dated September 8, 1945, addressed to Mr. Dan Bowerman, San Francisco, California, and signed by Sid D. Charles, is a true and genuine copy of the original letter bearing the same date and that it was written on behalf of defendants, or any of them, in this cause.

5. That a copy of the letter dated March 21st, 1946, addressed to Mr. Sid Charles, Ketchikan, Alaska, and signed by P. A. Miner, is a true and genuine copy of the original letter bearing the same date and that it was received by defendants, or any of them, in due course.

6. That a copy of the letter dated on April 8, 1946, addressed to Pierre A. Miner, New York City, and signed by Sid D. Charles, is a true and genuine copy of the original letter bearing the same date and

that it was written on behalf of the defendants, or any of them, in this cause.

7. That a copy of the letter dated April 11, 1946, addressed to Mr. Sid D. Charles, Ketchikan, Alaska, and signed by P. A. Miner, is a true and genuine copy of the original letter bearing the same date and that it was received by defendants, or any of them in due course.

8. That a copy of the letter dated October 9, 1946, addressed to Mr. Sid Charles, Ketchikan, Alaska, and signed by Dan Bowerman, is a true and genuine copy of the original letter bearing the same date and that it was received by defendants, or any of them, in due course.

9. That a copy of a letter dated October 12, 1946, addressed to Mr. Dan Bowerman, San Francisco, California, and signed by Sid D. Charles, is a true and genuine copy of the original letter bearing the same date and that it was written on behalf of the defendants, or any of them, in this cause.

10. That a copy of the letter dated January 7, 1950, addressed to Mr. Sid D. Charles, Ketchikan, Alaska, and signed by Fred J. Green, is a true and genuine copy of the original letter bearing the same date and that it was received by defendant, or any of them, in due course.

11. That a copy of the letter dated February 6, 1950, addressed to Mr. Sid D. Charles, Ketchikan, Alaska, and signed by Fred J. Green, is a true and

genuine copy of the original letter bearing the same date and that it was received by defendant, or any of them in due course.

12. That a copy of the document entitled "Modification of Agreement," dated February 21, 1950 and signed on behalf of the Alaska Fishing News by Sid D. Charles, and on behalf of United Press Associations by Jack Bisco, is a true and genuine copy of the original "Modification of Agreement," and that it was executed on behalf of Alaska Fishing News by defendant Sid D. Charles.

13. That a copy of the letter dated February 13, 1951, addressed to Mr. Sid D. Charles, Ketchikan Alaska, and signed by Harry Carlson, is a true and genuine copy of the original letter bearing the same date and that it was received by defendants or any of them, in due course.

14. That a copy of the letter dated January 18, 1954, addressed to Mrs. M. J. Flood, Ketchikan Alaska, and signed by David F. Belnap, is a true and genuine copy of the original letter bearing the same date and that it was received by defendants or any of them, in due course.

15. That a copy of the telegram dated February 15, 1954, addressed to David Belnap, and signed by Paul S. Charles, is a true and genuine copy of the original telegram bearing the same date and that it was written and sent on behalf of the defendants, or any of them, in this cause.

Dated at Juneau, Alaska, this 17th day of August, 1954.

/s/ JOHN H. DIMOND,
Attorney for Plaintiff.

Receipt of copy acknowledged.

Alaska Fishing News
Ketchikan, Alaska

June 30, 1945.

Mr. Sidney D. Charles,
Editor and Publisher,
The Alaska Fishing News,
Ketchikan, Alaska.

Dear Mr. Charles:

With reference to an agreement made between us today for United Press News Service to the Alaska Fishing News, it is mutually understood that as a condition to execution of such agreement, an authorized officer of United Press will write you confirming that the following understandings are integral parts of said agreement:

1—That the service mentioned in Clause One thereof shall consist of one hour of teletype service, daily from Seattle over facilities of the Army Signal Corps, tolls to be paid by Publisher and teletype to be furnished by United Press.

2—That a teletype machine will be installed as soon as possible and services started on a basis of one hour of service on each of the three days per week on which *The Alaska Fishing News* is published. Such service will continue on a thrice-weekly basis until *The Alaska Fishing News* begins daily publication, upon which time all terms of The Agreement will become effective. For the thrice-weekly service, the Publisher will pay The United Press the sum of \$32.17 weekly and also pay the Signal Corps tolls.

Sincerely yours,

/s/ MURRAY M. MOLER,

Alaskan Representative,
United Press.

Accepted by:

/s/ SID D. CHARLES.

Airmail

September 4, 1945.

Mr. Sid D. Charles,
Ketchikan Fishing News,
Ketchikan, Alaska.

Dear Mr. Charles:

This will answer the questions in your August 28 letter to Mr. Williams concerning possibility of teletype service to the *Fishing News*.

As you know, we proposed to absorb the operator's salary ourselves for the first six months of teletype service. At the end of the six months, if we had not succeeded in getting additional Alaska business to help carry the operator cost, we wanted you to have your option of bearing the cost thereafter, or of changing over to your present type of service.

Minimum weekly salary for an operator is \$52.50. They get wage increases based on seniority so that the exact cost would be higher in the event an operator with lots of seniority bid in the job.

However, we are willing to peg the cost to you at \$52.50 a week, absorbing any loss over that amount ourselves. As we added other clients in Alaska, of course, we would prorate the operator cost among them, so that the cost would decrease to you.

The cost of your present type of service, filed six days a week instead of the present three days, plus airmail followup would be \$20 a week, tolls collect.

I had hoped to have Murray Moler call on you again before this, but the unexpectedly—sudden capitulation of Japan required that he cover the occupation of Northern Japan, and it's hard to say now when he'll get back to the Alaskan mainland. I would appreciate it if you'd drop me a letter letting me know whether you wish to proceed with tolls—collect press until such time as we can line up other Alaskan business, or whether you wish to go ahead with teletype, with us absorbing the oper-

ator loss for the initial six months, and you absorbing it thereafter.

Sincerely yours,

DAN BOWERMAN.

March 21st, 1946

Mr. Sid Charles,
The Alaska Fishing News,
Ketchikan, Alaska.

Dear Mr. Charles:

Teletype service was started to the Alaska Fishing News effective October 3rd, 1945. As you will recall, we agreed to pay the Seattle operator during the first six months of this service and that six month period expires on April 3rd, 1946.

In accordance with your letter of September 8, 1945, you advised our Mr. Bowerman that if at the end of six months you decided to continue the teletype service, you would assume the operator charge of \$52.50 weekly; otherwise you would reduce the former charge to \$50.00 weekly. Even though we have not been able, as yet, to develop any further Alaska teletype business, we are willing to continue our arrangement, you to assume the operator charge of \$52.50. As a matter of fact, due to a new contract with the Commercial Telegraphers' Union, the cost of the operator has risen so that it is now costing about \$80.00 a week.

However, we are willing to stand by our agreement with you at the figure of \$52.50.

Will you please air mail me your reply? We will have to advise the operator and place the necessary orders if you want to discontinue the teletype service.

Sincerely yours,

P. A. MINER.

PAM:IR

The Ketchikan Daily News

April 8, 1946.

Pierre A. Miner,
Assistant Commercial Manager,
United Press Association,
General Office,
News Building,
New York City.

Dear Sir:

Your letter of March 21 at hand. While expressing appreciation for the six months reduced service, and also for your offer of \$52.50 instead of \$80 per week extra, we are in the position of being penalized because the United Press has no other Alaska connections. Our competitor here taking AP divides his costs with other stations.

The radio station manager here prefers the UP and we tried again to arrange with him a switch

from AP to UP, but were told that Kraft, in Juneau, owner of the stations here and in Juneau wanted a rate lower than UP cared to furnish. Naturally we have to see our rival get any advantage, as the competition is sharp. There is "grapevine talk" that Captain Austin E. Latrop is going to put a newspaper plant in Anchorage. We can only hope that with Alaska expanding, UP will be on the job and cut in on more patrons to share the cost with us.

Will state that your Seattle office is very cooperative. By the way, wish hereafter to secure with the report leading stocks, also will want baseball scores of major leagues later. Am enclosing a sample of stock quotations in condensed form. Should I write the Seattle office or will you so instruct them?

Your very truly,

THE DAILY ALASKA
FISHING NEWS,
SID D. CHARLES.

AP 37

STOCKS

AJ 8 $\frac{7}{8}$

AC 6 $\frac{5}{8}$

ACN 95 $\frac{7}{8}$

APL 16 $\frac{7}{8}$

T 191 $\frac{3}{4}$

ANA 47 $\frac{1}{4}$

BO 29 $\frac{1}{8}$

CMS 4 $\frac{1}{4}$

CW 7 $\frac{3}{4}$
IH 94 $\frac{1}{2}$
JL 45 $\frac{3}{4}$
K 56
NK 23
NYC 27 $\frac{7}{8}$
NP 31 $\frac{3}{4}$
PKD 10 $\frac{3}{8}$
UAL 44 $\frac{7}{8}$
UC 5 $\frac{3}{4}$
USS 85
SALES 1,560,000
INDUSTRIALS 203.12
RAILS 65.15
UTILITIES 42.28
POUND 4.03 $\frac{1}{2}$
CANADIAN EXCHANGE 90.85

W132PPS

April 11th, 1946.

Mr. Sid D. Charles,
The Daily Alaska Fishing News,
Ketchikan, Alaska.

Dear Mr. Charles:

Thank you for your kind letter of April 8th.

In accordance with your letter, we are increasing your weekly billings as of April 3rd.

I am airmailing a copy of your letter to our Seattle office so that they can be guided accordingly

regarding your stock list and the major league baseball scores.

Again, thank you for your cooperation.

Sincerely,

P. A. MINER.

PAM:HS

(Airmail)

October 9, 1946.

Mr. Sid Charles,
The Fishing News,
Ketchikan, Alaska.

Dear Mr. Charles:

My New York office advises they have received request from you that we change your service to 1,000 words of collect telegraph daily because of the high cost of the leased wire plus operator.

We have had Malcolm Donnelley doing some intensive work in Alaska for the past several months in a vigorous effort to line up some more clients and thus reduce the cost of the operator through sharing this expense. However, to date we have not succeeded.

We will, of course, go to the basis of 1,000 words by DPR if you prefer, but before doing so I would like to put the following up to you:

That United Press share the operator expense with you, on an open basis, for an indefinite period of time while we continue our efforts to line up added clients to share the expense. We simply would reduce your billing by \$25.00 per week and absorb that cost ourselves. Then, if we succeeded in adding one more client, we would bill the \$25.00 operating expense to him. If we added more than one, the total expense would be split three or more ways, bringing your figure down below \$25.00.

By leaving this on an indefinite basis, I mean that you would retain your privilege of going on a 1,000-word overhead basis if you later decided to do so. Similarly, we would retain the privilege of giving you your choice of either going to the overhead basis or resuming the entire operator cost, should we find it advisable some time in the future to do so.

I would appreciate it if you'd airmail me whether you prefer to retain the present service at a reduction of \$25.00 per week, or whether you wish to go on the overhead basis.

Sincerely yours,

DAN BOWERMAN.

January 7, 1950

Mr. Sid D. Charles,
The Ketchikan Daily News,
Ketchikan, Alaska.

Dear Sid:

Acknowledging your letter of Dec. 27th to C. Molander in New York, both Carl and Dan Bowman in San Francisco put me to work pronto to investigate ways and means of meeting your situation.

There are two possibilities I am now in process with. First we are making a complete checkup here on Alaska schedules, operator costs, consolidation of your schedule with Anchorage to determine just what saving can be made.

Secondly, and this one will be a honey if we accomplish it, we are arranging to check whether our San Francisco to Honolulu news files can be picked up in Ketchikan. Tests have been completed at KENI in Anchorage that show they can be picked up there with excellent results. Even a limited test on bringing them in on a teletype receiver was made successfully and we are shipping up a teletype for prolonged tests.

I talked with Bill Wagner of Alaska Broadcasting Co. this morning, who as you know owns the station at Ketchikan. Bill assured me he would be glad to cooperate on tests. I do not know just what equipment he has there for doing so but we are checking up.

Enclosed is a schedule of our MacKay transmission to Honolulu giving times and frequencies which you may care to discuss yourself with the engineer at KTKN.

KENI used a simple little frequency shift keyer to make their preliminary tests.

Here's what would be accomplished for you if this is worked out: You would get a large and complete file of national and world news daily that would give you a much more complete selection than it is possible to give you under the present arrangement where ACS transmission tolls must be paid and you would save the large toll cost which you now pay. We could supplement this file with a short one on news of specific interest to Alaska sent direct to you by ACS and direct protective coverage on the ones.

I'll report further to you very soon, Sid, and I assure you that we are making sincere efforts to get the problem worked out. Actually our additional Alaska business has materially increased the operating cost of this bureau instead of adding to the net but we are appreciative of your situation and are doing something about it.

Cordially,

FRED J. GREEN.

cc: Carl Molander
Dan Bowerman
J. L. Hoppes

United Press Associations
General Offices
News Building New York City

February 6, 1950

Seattle Bureau,
100 Fourth Ave. North.
Seattle 9, Wash.

Mr. Sid D. Charles,
The Ketchikan Daily News,
Ketchikan, Alaska.

Dear Sid:

We have gone over the situation thoroughly and find no way to make an immediate saving here. However, we do appreciate your situation and we therefore offer you some immediate relief. We will reduce your rate \$20 per week starting February 19th under the enclosed modification of agreement.

This provides suspension of the rate clause in our agreement for an indefinite period and the \$20 per week reduction in rate during such suspension. The term of the agreement to be extended by the length of time of the suspension.

I have talked this over with Perry Hilleary who is now in the office and he has all the facts from our standpoint. Perry says he will return to Ketchikan on Wednesday or Thursday of this week.

If you will sign both copies of the enclosed modification and return both to me, I will then forward

them to New York for execution by an officer of United Press and one executed copy will be returned to you.

Adding Alaska clients has not reduced our cost per point as we had hoped. Additional operators have been required and a news service tailored to Alaska needs and of the best quality have developed with the Alaska business. We have gone over the whole thing in detail, and have found no way to cut these expenses and maintain a quality service. We do want to meet your situation and are therefore willing to dig down for our share on the above rate reduction. We are continuing the tests on picking up the San Francisco to Honolulu news transmissions in Alaska. Good possibilities may develop from that and we shall keep you advised.

It has been very pleasant talking with your Perry Hilleary who appears to be a very able young man. Kindest personal regards.

Cordially,

FRED J. GREEN.

cc: CBM DB

MODIFICATION OF AGREEMENT

New York, February 21, 1950.

With reference to the agreement between United Press Associations and The Alaska Fishing News for United Press news service to The Alaska Fish-

ing News at Ketchikan, Alaska (now known as The Ketchikan Daily News) it is mutually agreed that

1. The rate mentioned in Clause II thereof suspended by mutual agreement starting February 19, 1950, and the rate during such suspension shall be \$52.52 per week.

2. This suspension may be terminated by either party at any time upon thirty days notice and the weekly rate would then return to the present figure of \$72.52 per week.

3. The term of the agreement between the parties shall be extended by the length of time during which the above suspension is in effect.

UNITED PRESS ASSOCIATIONS,

By JACK BISCO,
Vice-President.

THE ALASKA FISHING
NEWS,

By SID D. CHARLES.

Blinds: FHB CBM

February 13, 1951.

Mr. Sid D. Charles,
Ketchikan Daily News,
Ketchikan, Alaska.

Dear Sid.

Your letter of January 23 asking that we cut down our one-hour pony to 30 minutes to help you reduce costs has been forwarded to me. Fred Green has been transferred to Los Angeles and my superiors asked me to make a study of the situation because I have had first-hand experience with the Alaska service for several years.

First of all, if you cut your news service in half, I feel it would be a risk to you. The world's news in just 3,000 words would be reflected in your editions and I'm very much afraid you soon would find it to be a dangerous economy. The savings in tolls would amount to only \$13.50 per week.

Secondly, the reduction would not lessen our cost of operators and filing procedure at all, so there would be no savings we could pass on to you. Increased costs have far outrun the Alaska revenue we have added since we first started serving *The Fishing News*.

Fred and I hoped last year's modification reducing your rate \$20 would help see you through a tough period. And now, as your battle goes on, I don't want to see the News weakened by a skeleton news report.

Since my bosses referred your letter to me, I have some authority to make a recommendation. And this is my idea: how would you go for a new agreement altogether, with a flat rate of \$50 a week for a 10-year period? The lower rate would be a help to you and it would be offset by a longer period of service for United Press.

You helped establish United Press in Alaska and we all have a real desire to see our pioneer client through to victory. You are putting up a sweet fight to give Ketchikan an independently edited newspaper. I've been watching that battle down here ever since you and Bud told me about it.

That rate is a humdinger, but I think UP will go for it with the confidence I have that the Ketchikan Daily News is going to be around for a long time if we do our part. I hope the proposal looks good to you. It is fair to both you and United Press.

I wish we could talk about this across a desk in your room at the Sorrento Hotel, but I hope you know I'm personally anxious to see you win the battle up there.

Best regards,

Harry Carlson.

bcc: FHB FJG DDW LK CBM PAM

Seattle, Wash.

January 18, 1954.

Mrs. M. J. Flood,
Ketchikan Daily News,
P. O. Box 79,
Ketchikan, Alaska.

Dear Mrs. Flood:

Thank you for your letter of January 14 sent in reply to my telegram of January 13. In my telegram, I said I had just received word from our New York office regarding your recent letter directed there in which you referred to a previous letter of November 14, the original of which was never received in New York.

I also said I was perplexed by your reference to cancellation since the agreement between us had renewed a short time ago and a new term is now in effect. In addition there is an extension of the term by the conditions of a modification to the principal agreement made in February, 1950.

Clause Eighth of the agreement between us establishes machinery for the termination of that agreement. Neither of us has ever entered a cancellation against the agreement in conformity with the provisions established in Clause Eighth, and the agreement thus continues in full force and effect. We cannot, therefore, discontinue service to you.

I have taken the liberty of turning over to Martin Heerwald, our Washington-Alaska news manager,

your comments on Alaska news coverage. We have a continuing program to expand and improve our service in every department, and your comments will be helpful to him. Heerwald will be in Alaska himself later this week, and I have asked him to get in touch with you for a more detailed discussion on these points.

With respect to our rates, my records here show that the increases you mentioned have been more than offset by reductions which have totaled nearly \$50 per week during the past seven years. The latest reduction, amounting to \$20, was made in February 1950, and is still in effect. It seems to me on the basis of the information I have here that we have been very fair in the matter of rate reductions in the past, making these in the face of constantly mounting costs to us to produce our news reports. I'm personally prepared to discuss the matter of rates with you further if you wish.

We have always been proud to be on your team at Ketchikan, and I regret very much that a misunderstanding has arisen with respect to our agreement. It's my earnest hope that this letter will help to clarify the matter and that everything will shortly be straightened out to our mutual satisfaction.

With warmest regards and good wishes, I am

Cordially yours,

DAVID F. BELNAP.

WUS103 26 PD

Ketchikan, Alaska, Feb. 15, 1003P 1954.

David Belnap,

United Press Service Komo Bldg., Seattle, Wash.

Discontinue Press Service at Once am Shipping
Teletype Via Freight Until UP Can Meet Terms
and Service of Associated Press We Cannot Con-
tinue to Accept Service.

PAUL S. CHARLES,
Daily News.

240P

[Letters dated August 9, 1945; September 8, 1945,
and October 12, 1946, a portion Plaintiff's Exhibit
No. 1, are identical to letters attached to the Com-
plaint. These letters are printed on pages 12 to 16
of this record.]

[Endorsed]: Filed August 21, 1954.

Received in evidence April 13, 1955.

PLAINTIFF'S EXHIBIT No. 2

Agreement

[This portion of Plaintiff's Exhibit No. 2 is
identical to Exhibit A of the Complaint. This ex-
hibit is printed on pages 6 to 11 of the record.]

Alaska Fishing News

August 28, 1945.

Edwin Moss Williams,
United Press Associations,
News Building,
New York City, N. Y.

Dear Sir:

In reply to yours of August 9. How much would an operator cost in case of a teletype being installed? Since we were the first to petition your company for a teletype for a combination rate with the local radio station, and you allowed Associated Press to "jump the gun" on you, it seems we are to be penalized for our enterprise. However, that "water over the wheel." But we would be less than human if we did not remind you of our efforts the past few years to get you to hold and expand your service in Alaska.

Frankly, we question whether the extra expense for even a six months' trial and the possible added cost of an operator would be justified. After spending a large sum for our own building and modern machinery, the weakest link in our ambition to have the leading paper will be, it seems, competition in press service.

Anyway, let us know the expense of an operator. Also let us know what charge you will make for giving us the present service daily, instead of three

times a week, with a follow up by airmail as you are doing now, from Seattle.

Thank you for your prompt reply to this inquiry.

Yours very truly,

THE ALASKA FISHING
NEWS,

/s/ SID D. CHARLES,
Editor.

Ketchikan, Alaska, Fishing News

Effective January 6th, 1946, total basic rate increased by \$1.15 per week account operators' increase. This to be applied against One hour 6 Day Printer service.

Effective December 29th, 1946, total basic rate increased by \$3.09 per week account operators' increase. This to be applied against One hour 6 Day Printer service.

Effective January 9th, 1949, total basic rate increased by \$3.09 per week account operators' increase. This to be applied against One hour 6 Day Printer.

Effective January 9th, 1949, total basic rate increased by \$2.06 per week account operators' increase. This to be applied against One hour 6 Day Printer.

Modification of Agreement

New York, February 21, 1950.

With reference to the agreement between United Press Associations and The Alaska Fishing News for United Press news service to The Alaska Fishing News at Ketchikan, Alaska (now known as The Ketchikan Daily News) it is mutually agreed that:

1. The rate mentioned in Clause II thereof suspended by mutual agreement starting February 19, 1950, and the rate during such suspension shall be \$52.52 per week.

2. This suspension may be terminated by either party at any time upon thirty days notice and the weekly rate would then return to the present figure of \$72.52 per week.

3. The term of the agreement between the parties shall be extended by the length of time during which the above suspension is in effect.

[Seal] UNITED PRESS ASSOCIATIONS,

By /s/ JACK BISCO,
Vice President.

THE ALASKA FISHING
NEWS,

By /s/ SID D. CHARLES.

Received in evidence April 13, 1955.

Ketchikan, Alaska, Fishing News

Extraordinary Cost Assessment—Effective January 7, 1951, \$4.75 per week.

Effective May 5, 1953, total basic increased by \$4.18 per week account Labor Increase. This to be applied against One hour 6 Day Printer service.

[Letters dated August 9, 1945; September 8, 1945, and October 12, 1946, a portion of this Plaintiff's Exhibit No. 2, are identical to letters attached to the Complaint. These letters are printed on pages 12 to 15 of this record. Letters dated September 4, 1945, March 21, 1946, April 8, 1946, April 11, 1946, and October 9, 1946, a portion of this Plaintiff's Exhibit No. 2, are identical to letters appearing in Plaintiff's Exhibit No. 1. These letters are printed on pages 222 to 229 of this record.]

Received in evidence April 13, 1955.

PLAINTIFF'S EXHIBIT No. 3

The Ketchikan Daily News

February 10, 1950.

Mr. Fred J. Green,
United Press Associations,
Seattle Bureau,
100 Fourth Ave.,
Seattle 9, Wash.

Dear Mr. Green:

We are enclosing the two signed copies of the Modification Agreement as requested in your letter of February 6th.

Mr. Hilleary has not returned from Seattle yet hence we have not heard of his visit with you, but we would like to take this opportunity to thank you for your cooperation in the matter.

We keep hoping that "tomorrow the axe will fall on our opposition down the street but in the meantime such reinforcements as yours keeps the wolf from our door.

Sincerely yours,

/s/ SID D. CHARLES.

Received in evidence April 13, 1955.

PLAINTIFF'S EXHIBIT No. 5

April 15, 1936.

Mr. Sid D. Charles,
(Airmail)
Ketchikan Fishing News,
Ketchikan, Alaska.

Dear Mr. Charles:

Pete Miner of our New York office sent me a copy of your April 8 letter, in which you remarked that your competitor at Ketchikan divides his cost with other stations, and in which you regretted that we had been unable to make a deal with Ed Kraft for the Ketchikan station.

We certainly did our darndest to work out something with Kraft that would also benefit you, but

the fact is that he is not sharing costs with your competitor, and the deal he wanted would not have shared UP costs either. In view of this, we thought it best to leave him alone.

What Kraft is using is not the full teletype that goes to the newspaper, or any part of it. Instead, he is taking 30 minutes of teletype a day at an hour that is not of use to a newspaper, and supplementing it by airmail drops from Seattle. He does not use any of the newspaper teletype copy and did not want to make any deal for using same, despite the fact it would be of value to him.

I had not heard that Cap Lathrop is contemplating a newspaper at Anchorage. For your confidential information, another Anchorage party wanted to start a paper there, but found himself absolutely stymied on getting newsprint, and was forced to check the idea until newsprint becomes available.

Best regards,

/s/ DAN,

DAN BOWERMAN.

cc: Harry Carlson,
United Press,
Seattle, Wash.

February 5, 1949.

Mr. Sid D. Charles,
Publisher,
The Ketchikan Daily News,
Ketchikan, Alaska.

Dear Sid:

Carl Molander has sent me your letter of January 29, with instructions to immediately rectify the editorial shortcomings you outlined.

Concerning the operators' assessment, I probably wish it was possible to get the transmissions coordinated even more than you do. The more business we add in Alaska, the more money we seem to lose, because every client wants his copy at a different time of day, and instead of being able to send every one at once and reduce the teletype operator cost, we have to keep hiring more teletype operators. And, while we probably could work out a mutually agreeable filing time for the Ketchikan News and the Anchorage News, the ACS runs those as two separate circuits so that the files cannot be combined.

Editorially, my impression was that we were miles ahead of the AP as a general rule, and I'm glad to have it pointed out that there are defects in the coverage.

We are going to work to remedy these at once and you'll be hearing direct from Harry Carlson in Seattle thereon.

Best personal regards,

DAN BOWERMAN.

The Ketchikan Daily News

December 27, 1949.

United Press Association,
General Offices,
News Building, New York City.

Attention: Carl B. Molander.

Gentlemen:

Your teletype and press service is costing us just twice the amount the Chronicle, the opposition paper here, pays to Associated Press. They also get twice the wordage, one hour in the morning and one hour in the afternoon. We get one hour daily, from 11:00 a.m. to 12:00 noon.

In a letter dated September 4, 1945, your Mr. Dan Bowerman said: "As we added other clients in Alaska, of course, we would prorate the operator cost among them, so that the cost would decrease to you."

On the contrary, you have added other patrons and our costs have kept increasing.

On October 9, 1946, Mr. Bowerman said, on advice from New York:

"That the United Press share of the operator expense with you, on an open basis for an indefinite period of time, while we continue our efforts to line up added clients to share the expense. We simply would reduce your billing by \$25 per week and absorb the costs ourselves. Then if we succeeded in

adding one more client we would bill the \$25 operating expense to him. If we added more than one the total expense would be split three or more ways bringing your figure down below \$25.

Since that letter was written you have added the Anchorage News, besides, we understand, some radio stations. We are told that the latest radio station KALA, at Sitka, channeled with the same news as at the same hours as our news, has been given a reduced combination rate. If that is true, why shouldn't we receive the same benefit?

We are perfectly willing to change our hour and get on the same channel with Anchorage News in order to cut costs.

Frankly, we must cut costs. It just isn't in the cards to pay twice as much for half the news which our opponent gets here through the Associated Press. Unless our rates can be adjusted cooperatively and in combination with other UP patrons in Alaska, we shall have to make some other arrangement.

Yours very truly,

SID D. CHARLES.

Harry—Original sent to New York office.

/s/ SID.

Received in evidence April 13, 1955.

PLAINTIFF'S EXHIBIT No. 9

The Ketchikan
Daily Alaska Fishing News

October 14, 1946.

United Press Associations,
Star Building,
Seattle, Washington.

Gentlemen:

Fellows, here's a bear story we printed which might be worth a re-hash. It's not many places where one bear furnishes a meal of apple pies, steak, and a fine robe for a cabin floor.

Some time ago I probably pulled a boner in asking you not to repeat any news from Juneau, as I understood your correspondent there would send me a carbon copy direct without need of clearing through the Seattle office. We haven't received a thing from Juneau for a long time, so perhaps we'd better depend upon your office for whatever comes in from any Alaskan town.

Another thing, can't you give me more shorts instead of too many long press dispatches? Of course, in case of really big news, I want full coverage.

On the whole, your service is excellent, and I am getting splendid co-operation from the Signal Corps, but every once in a while the opposition seems to get the edge on a story with an Alaskan slant.

We have left only one box of roll paper for the printer, so please send us a supply at your earliest convenience.

Yours very truly,

THE DAILY ALASKA
FISHING NEWS,

/s/ SID D. CHARLES,
Editor.

The Ketchikan
Daily Alaska Fishing News

November 22, 1946.

Harry Carlson,
United Press Association,
Seattle Bureau,
Seattle, Washington.

Dear Harry:

I know how difficult it is to lay down any hard and fast rules for service. Even though I get peeved at times and "blow my top," your staff is doing a fine job, and are always co-operative. As you will notice in the previous letter I sent you, copies which I am enclosing, I stated there was very little interest here for hockey, although I know there is a large national interest.

The main sports of interest here in season are baseball, football, basketball and leading ring con

tests. Nearly all the school kids play basketball. There is interest in bowling and an occasional outstanding score might be all right.

On Mondays I have been picking up basketball scores from the Sunday P.I. when it arrives. Now, Harry, it is a hell of a job to try and give explicit instructions on any of these sports. I do not wish to sacrifice live news at any time, especially news with an Alaskan slant, for sports. At best we can hope only in having a skeleton report of sports and it takes some nice judgment to know which ones to feature. Other than for some outstanding game, about the best we can hope for, is to get score results for the major games.

Your new service with more shorts is fine.

Thanks again for your interest and pass along to members of your staff my appreciation. When I "blow my top," tell them the old geezer, with more than 40 years newspaper experience in Alaska, has "missed too many boats."

Give Bob Seal my regards if you see him.

Yours, as ever.

/s/ SID D. CHARLES.

Incl: cc ltr. May 7.

cc ltr. April 16.

SC/mid

The Ketchikan
Daily Alaska Fishing News

17 March, 1947.

United Press Association,
Seattle Bureau,
Seattle, Washington.

Attention: Harry Carlson.

Dear Harry:

We have only four rolls of teletype left. We use the single rolls. Ordinarily a roll lasts about one month. What we have on hand will carry us three or possibly four months, so thought we better get in an order in time. The teletype is working fine and the fellow from the Signal Corps takes very good care of it.

Want to congratulate you boys on the way the stuff is coming in. Like very much your handling of congress, and am getting a better Alaskan coverage. Keep in mind sending as many short articles as possible, with, of course, always good coverage for leading stories. Our circulation is continuing to pick up without solicitation. Now that paper is promised we intend to put on a drive.

Regards to all,

/s/ SID D. CHARLES,

DAILY ALASKA FISHING
NEWS.

The Ketchikan
Daily Alaska Fishing News

21 April, 1947.

United Press Association,
Seattle Bureau,
Seattle, Washington.

Dear Harry:

Today, Saturday, received from New York sample weekly mat service for \$1.85 weekly plus 30 cents airmail. Frankly, Harry, it does not fill our particular needs, so you can order it cancelled. We will pay for what is sent meantime. Am giving you an extra copy for your New York office.

What we most need are pictures of Alaska, Northwest and Pacific Coast scenes. The reason I am writing you directly is because of your sympathetic understanding of our setup, and to know if you have any suggestion. Am wondering if there is a possibility of getting your organization there to send us mats of outstanding events from the Seattle Star or other Seattle sources and making the necessary charge. For instance, your UP dispatch told about pictures being taken of Ed Kerr, Grand President of the Alaska Pioneers, and those mats would have come in fine for our purposes.

This copy also will answer the letter sent us by Dan Bowerman from the San Francisco office, dated April 14. Your airmail service of UP dispatches from Seattle and the Red Letter service are greatly

appreciated. Again I want to thank your office particularly for such fine co-operation.

Yours truly,

/s/ SID D. CHARLES,

DAILY ALASKA FISHING
NEWS.

The Ketchikan
Daily Alaska Fishing News

September 27, 1947

Harry Carlson,
United Press,
Seattle, Wash.

Dear Harry:

That Jack Ryan's column, "Seattle Calling," making a hit with Bud, Bob, myself and the staff. Also have received outside favorable comments. You know, while we won't admit it, Southeast Alaska especially, is a sort of suburb of Seattle, and, therefore, Seattle gossip interests a large number.

Suppose you've read about the \$30,000 libel suit filed against the Opposition. The joke of it is that the editor will hardly dare to divulge the high source of where he secured his information.

Let me assure you that we appreciate the effort you and the local UP staff in Seattle are doing for

coverage. Bob Coleman, one of our linotype operators, is planning on buying from us enough of our spare machinery to start a paper in the co-op colony at Haines. If deal goes through will let you know and you might arrange with him for service. You can write him, anyway, if you care to. De Armond said Clark of Juneau was in and is preparing to leave Juneau, but already has informed you so you can arrange for Juneau coverage.

Yours in haste as usual,

SID D. CHARLES.

UP V Uwk 3 30 Paid DI

Ketchikan, Alaska, Dec. 24, 1947, 9 a.m.

Harry S. Carlson,
United Press, Seattle.

No Paper Christmas Day. Merry Christmas and Happy New Years to Yourself and Charming Wife and Convey Same to Your Efficient Staff. Remember Latchstring Is on Outside for You All.

SID AND BUD CHARLES.

24/1702Z

Pls Ack
OK UP

October 8, 1947

Mr. Sid D. Charles,
Daily Alaska Fishing News,
Ketchikan, Alaska.

Dear Sid:

Our New York office has asked me to find out the actual street address of the Fishing News in Ketchikan. We need it for insurance purposes on the teletype machine and a post office box number will not suffice.

Can you supply me your street address, sir?

We have just moved our bureau headquarters and I'm snowed under with readjustments and reorganization, which includes the addition of several men to the staff and general expansion of our Seattle bureau. Will tell you about it sometime when I have more time. I hope, however, that in the general confusion of moving you have not suffered your file to you.

Best regards,

HARRY CARLSON.

The Ketchikan
Daily Alaska Fishing News

Oct. 15, 1947.

Dear Harry:

Street number of the Daily News is 501 Dock Street.

Note what you say about moving and would be glad to know details later. The only thing I notice about the file is lack of receiving briefed stock news. That is a feature I would like to keep up. Quite a few are now depending on the stock news we receive.

Bob and Bud both send their best regards.

Yours truly,

/s/ SID D. CHARLES.

Tell Jack Ryan we think he is doing a swell job on "Seattle Calling." The Colman Building where most of the Alaska Salmon cannery people have their offices, and a lot of other firms connected with Alaska, might be a good news source for him.

BOB DeARMOND.

The Ketchikan Daily News

January 26, 1948

Harry Carlson,
United Press,
Seattle, Washington.

Dear Harry:

I want you to pass along the enclosed to Mr. Baillie and tell him from me in all my fifty years of active newspaper work I have never seen such an effort to throw up a smoke-screen or make a mountain out of a mole-hill as the Governor Gruening-Sondberg crowd to try and discredit a report—in other words, John Ryan.

We thought in answering the Governor's complaint about the way this paper, The Daily News handled the Legislature, we had given Mr. Baillie a hint of the one-sided and prejudiced manner in which the Governor's crowd operates. The present incident transcends all former efforts.

The "crime" of the News is that it insists on being an independent paper, and not a mere tool or stoogie the same as our Opposition in this city. I won't even admit that Mr. Ryan pulled a bone. He had good reason for believing his statement was based on facts. The only loophole they could find is that he, himself, did not attend the meeting. Mr. Baillie must have been a reporter at one time like myself and I would like to ask if he, myself or any other good reporter always have met every occasi

without any slipup. My training was that only in case of personal prejudice or malicious intent, or refusal to correct any proven errors, was there ground for criticism.

Ryan has been a thorne in the side of the Opposition ever since he started his newsy column because of its readers' appeal in this section. The present correspondence shows to what extent the Governor's crowd will go to try and discredit any one who "won't play ball" with it. If I were Ryan's chief I would stand behind him until hell freezes over. Now, Harry, I want Mr. Baillie to know the splendid co-operation we are getting from your staff. We are doing all we can to reciprocate. We talked today to Bill Wagner of the Alaska Broadcasting Company and he was sympathetic to getting a hookup with the UP if the UP can get a better coverage in Alaska in the future. We are not trying to tell Mr. Baillie how to run his business but we don't like to see anyone discredited by a "smear campaign" under the clever guise of "keeping the press clean."

Yours as ever,

/s/ SID D. CHARLES.

The Ketchikan Daily News

Feb. 23, 1948.

Dear Harry:

We have on hand now just two rolls of teletyp paper. One roll lasts about a month. It is single rolls. Am enclosing example.

Harry, your staff is doing an excellent job, but we would appreciate more "shorts" whenever possible. The Congress review each time is excellent and handled with skill. The Seattle column also is specially good. In any leading story, of course, we want details but in the "mill of run stuff" would appreciate more shorts as we are trying to make a "newsy looking" front page and don't like to break over too many stories.

We are arranging to go to eight pages in March. Bob and Bud send their best regards.

Yours truly,

/s/ SID D. CHARLES.

The Ketchikan Daily News

March 14, 1948.

Dear Harry:

Meant to answer yours of March 2 sooner, but you know how it is with us newspaper guys in writing letters. Your letters to Jesse Hogue got results from Roger Johnson and Rosemarie. In

fact, I had about decided that the United Press was indifferent to our demands, figuring we were too "small fry" to bother about. So it was indeed refreshing to learn that this was not so.

For your own information we were all ready to sign papers for taking over opposition with promise of Baker to sign but the entire political gang he is tied up with came here for the Democratic convention and he changed his mind, and secured enough money to make good an IOU sum he had borrowed from his firm. We had talked over press service and figured on keeping for a time both UP and AS and if later one was dropped it would be the AS. As it is now we shall have to slug it out. When our present 6-page rolls are used up we will begin an 8-page in April and have ordered some additional feature. Bud and Bob both send their regards, especially to Mrs. Carlson.

Yours,

/s/ SID D. CHARLES.

The Ketchikan Daily News

April 16, 1949.

Harry Carlson,
Seattle, Washington.

Dear Harry:

Meant to answer yours of April 7 sooner. I admit the Washington, D. C., service has improved.

But the breaks seem to be against us in an occasional big story. Take the earthquake, for instance. The coverage was fine but for the important part that no deaths were listed in the first coverage. People kept calling us on the phone and I answered, fortunately from our account there were no deaths, when, lo, the opposition came out that seven deaths were reported.

Now, here's the score: The Chronicle receives its AP news from 7:00 to 7:30 and 8:00 to 9:00 a.m. and 1:00 to 1:30 p.m. The KTKN radio takes a separate AP report also listed the possible deaths. As you know our time is from 11:00 to 12:00 a.m. I noticed the UP report to the Anchorage Times on the same day gave two deaths. A brief added bulletin after 1:30 p.m., Chronicle Time would have saved the day for us.

I don't know the full modus operandi of the Signal Corps. I am told that we cannot receive anything during the hours they are sending to the AP or KTKN. But would it not be possible to shoot a special wire in case of an emergency? Anyway, even after 1:30 p.m., latest Chronicle time, a bulletin still would have saved us.

Now, regarding our deadline:

As a usual thing, we try and get the last form locked up at 3:00 p.m. Sometimes, under favorable conditions, we get going at 2:30 and sometimes because of delays, it is 3:30.

In case of a tip that an Important late file was coming, we could hold our forms. However, unless it was very important, or supplementary to a story we already had received, it would be best to hold it for next day's filing.

As you know, Harry, it is damned hard to lay down any hard and fast rules. We are cutting into the circulation of the Opposition. Its biggest assets seem to be the AP and Drew Pearson's column.

Bud and DeArmond and myself are fully appreciative of your fine co-operation. We fully realize the difficulties you are up against. I recall that in early days the UP made a special effort to give increased or rather special coverage of surrounding districts of its clients. But since it has become an international organization, it goes on the same theory as the AP, that is, special correspondents should be hired to get other than mill of the run news. I am surprised that you have been able to get as much as you have for us. Naturally we seem a "small potato" in the over-all coverage of the UP. But the fact remains we initiated the UP entrance into Alaska, and it is a field well worth getting special attention from your national headquarters.

Whenever possible, without too much sacrifice of vital parts of lead stories, we would appreciate more "shorts."

By the way, your follow up on the Quake story has been excellent; also like your "human interest" stories such as the "Weeping Statue," etc.

Important—Be sure and order teletype roll
Have one left good for about a month. This is the
third notice. It is single roll; am enclosing a sample

Bud says to remind you that the Big Fish Derby
has opened and you might come north and snag
prize salmon. Anyway, he says send the Mrs. north
for a vacation and "he'll take care of her." We
see that he will have plenty of competition. Anyway
give Mrs. Carlson our regards.

Yours,

/s/ SID D. CHARLES.

P.S. (Confidential): We are looking around for
a good reporter. Bob DeArmond is leaving us
about a month for an operation, and he expects
to be gone at least nine months. Should we be able
to get a good all-around newspaper man who will
attend to business, we can reasonably assure him
a permanent job.

/s/ S.D.C.

[A letter, dated April 8, 1946, is identical to the
letter set out in full in Plaintiff's Ex. No. 1. See
page 225 of this record.]

Received in evidence April 14, 1955.

DEFENDANTS' EXHIBIT G

The Ketchikan Daily News
Post Office Box 79
Ketchikan, Alaska

November 14, 1953.

United Press Association,
News Building,
New York City, N. Y.

Gentlemen:

This letter will authorize you to cancel our news service with the United Press Association as of January 15, 1954.

We have long contemplated a change, feeling that we could not continue to pay higher and higher rates for the same amount of news. When we began service with you in 1945 the rate per week was \$38.17—it is now \$61.45. I am well aware of the rising costs, but the point is, we are not in the position to afford it. Over the years we have had a good deal of correspondence with you on the different rate changes. During a visit to Seattle, I stopped at your Seattle Bureau with the thought in mind to make arrangements for cancellation and was informed by your Mr. Beauchamp that perhaps something could be arranged and not to be hasty in making other arrangements. That was in July of this year. I have not heard from either your Seattle office or your own office since then.

Mr. Charles has been somewhat unhappy with the news coverage we get on Alaska in the past and we have been scooped a good many times by our opposition.

We thank you for your past courtesies and hope that this cancellation will not prove troublesome for either of us.

Sincerely yours,

M. J. FLOOD.

Received in evidence April 13, 1955.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America,
Territory of Alaska,
First Division—ss.

I, J. W. Leivers, Clerk of the United States District Court for the District of Alaska, First Division thereof, do hereby certify that the hereto-attached pleadings are the original pleadings and Orders of the Court filed in the above-entitled cause and are the ones designated by the Appellant hereto to constitute the record on appeal herein.

In Witness Whereof, I have hereunto set my hand and caused the seal of the above-entitled court to be affixed at Juneau, Alaska, this 23rd day of August 1955.

[Seal] /s/ J. W. LEIVERS,
Clerk of District Court.

[Endorsed]: No. 14863. United States Court of Appeals for the Ninth Circuit. United Press Associations, a Corporation, Appellant, vs. Sidney Dean Charles, Paul S. Charles and Patricia Charles and the Pioneer Printing Company, a Corporation, Appellees. Transcript of Record. Appeal from the District Court for the District of Alaska, Division Number One.

Filed August 25, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14863

UNITED PRESS ASSOCIATIONS, a Corpora
tion,

Appellant,

vs.

SIDNEY DEAN CHARLES, PAUL S
CHARLES, PATRICIA CHARLES, and th
PIONEER PRINTING COMPANY, a Cor
poration,

Appellees.

APPELLANT'S STATEMENT OF POINTS

In the United States Court of Appeals for the Ninth Circuit, appellant proposes to rely upon the following points as error:

1. The court erred in making its order of April 12, 1955, in which it was ordered that this case be tried by a jury, and it erred in permitting this case to be tried by a jury and not by the court.

2. With reference to Instruction No. 4 of the court's instructions to the jury—

a. The court erred in instructing the jury that the term of the contract, the subject of this action would expire on September 27, 1957, rather than as appellant maintained, on September 27, 1962.

b. The court erred in giving to the jury that portion of Instruction No. 4 which reads as follows:

“In determining the amount of damages, if you find that plaintiff is entitled thereto, you may consider * * * the probability of change during the period referred to in the rates, the cost of doing business, and the margin of profit as well as the probability or improbability that the defendants would remain in business.”

3. The court erred—

a. In entering its judgment of April 22, 1955, ordering that appellant take nothing by its complaint;

b. In failing and refusing to ignore the jury's verdict herein and to make its own independent findings of fact and conclusions of law; and

c. In failing and refusing to enter judgment for appellant for adequate and substantial damages, as established by the evidence, and for appellant's costs and attorneys' fees.

4. The court erred in entering its minute order of May 20, 1955, denying appellant's motion under Rule 59, Federal Rules of Civil Procedure, to vacate judgment or for a new trial.

Dated: August 22, 1955.

/s/ JOHN H. DIMOND,
Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed August 25, 1955.

